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IN THE

Supreme Court of the United States

October Term, 1975

Docket No. **75-496**

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, as Treasurer of the Town of Bethany, JAMES BERRY, as Treasurer of the Town of Woodbridge, SIDNEY SVIRSKY, as Town Clerk of the Town of Bethany, and JEAN HANNA, as Town Clerk of the Town of Woodbridge,

Petitioners,

vs.

JOHN E. BAKER and GERALDINE S. GEORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

S. ROBERT JELLEY,
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GERALD P. DWYER,
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New Haven, Connecticut 06510.

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IN THE

Supreme Court of the United States

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No.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, as Treasurer of the Town of Bethany, JAMES BERRY, as Treasurer of the Town of Woodbridge, SIDNEY SVIRSKY, as Town Clerk of the Town of Bethany, and JEAN HANNA, as Town Clerk of the Town of Woodbridge,

Petitioners,

VS.

JOHN E. BAKER and GERALDINE S. GEORGE,

Respondents.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Regional High School District No. 5, Regional Board of Education of Regional High School District No. 5, Henry W. Benedict, James Berry, Sidney Svirsky and Jean Hanna petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Second Circuit entered July 23, 1975, affirming a judgment of the United States District Court for the District of Connecticut entered January 8, 1975.

Opinions Below

The opinion of the Court of Appeals, dated July 23, 1975 (Appendix I, *infra*, pp. 1a-8a), is not yet reported. The opinion of the District Court, dated November 22, 1974 (Appendix III, *infra*, pp. 11a-20a), is not reported.

Jurisdiction

The judgment of the Court of Appeals (Appendix II, *infra*, pp. 9a-10a) was entered on July 23, 1975. The jurisdiction of this Court is invoked under 28 U.S.C. §1254(1).

Questions Presented

1. Whether the one person-one vote principle has application to the board of education of a regional school district comprising towns of unequal population where:

> (a) the board of education of the district has significantly fewer powers than the board in *Hadley* v. *Junior College District*, 397 U.S. 50 (1970),
>
> (b) the powers of the board of education are effectively controlled by the regional district meeting and by the referendum, both of which embody the one person-one vote principle in its purest form, and
>
> (c) the board members are elected by town meetings in each of the towns rather than by individual voters at town elections.

2. Whether there is present the necessary standing, justiciability, and jurisdiction to raise the one person-one vote issue where the suit was really instituted by the

regional school district's largest town, which chose the plaintiffs, announced that it had "authorized its attorneys" to bring the suit, and is paying for the suit.

Constitutional Provision Involved

The United States Constitution, Amendment XIV, §1 provides:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

Statement of the Case

Regional High School District No. 5 comprises the three towns of Orange (population 13,524), Woodbridge (population 7,673), and Bethany (population 3,857), which are suburbs of New Haven, Connecticut. District No. 5 provides the educational program for grades 7 through 12 in the District.[1] The average number of pupils in the District is 3,377, with 1,835 from Orange, 998 from Woodbridge, and 543 from Bethany. For the school year 1972-73, Orange contributed 55.04% of the District's budget, Woodbridge contributed 29.34%, and Bethany contributed 15.62%.

District No. 5 is one of the sixteen regional school districts in Connecticut, and those sixteen districts comprise 44 of the 169 towns into which Connecticut is divided. Except for Districts No. 17 and No. 18, each of the regional

1. Each of the towns has a separate school system for kindergarten through sixth grade, administered by a town board of education.

boards of education has equal representation from each of the towns in the district.[2]

2. Connecticut Regional School Districts.

	Population 1970 Census	Population July 1, 1972 Estimate	Number of Children in Regional District Schools October 1, 1973	Representatives on Regional District Board
District #1				
Canaan	931	970	40	1
Cornwall	1177	1200	74	1
Kent	1990	2000	92	1
North Canaan	3045	3100	190	1
Salisbury	3573	3600	183	1
Sharon	2491	2300	143	1
District #4				
Chester	2982	3000	323	3
Deep River	3690	3900	393	3
Essex	4911	5100	445	3
District #5				
Bethany	3857	4100	557	3
Orange	13524	14000	1840	3
Woodbridge	7673	8000	1014	3
District #6				
Goshen	1351	1400	220	3
Morris	1609	1700	432	3
Warren	827	920	341	3
District #7				
Barkhamsted	2066	2300	262	2
Colebrook	1020	1000	125	2
New Hartford	3970	4000	495	2
Norfolk	2073	2100	228	2
District #8				
Andover	2099	2100	264	3
Hebron	3815	4300	591	3
Marlborough	2991	3300	363	3

(Footnote continued on next page)

(Footnote continued from preceding page)

	Population 1970 Census	Population July 1, 1972 Estimate	Number of Children in Regional District Schools Octber 1, 1973	Representatives on Regional District Board
District #9				
Easton	4885	5400	461	4
Redding	5590	6200	493	4
District #10				
Burlington	4070	4300	1240	4
Harwinton	4318	4500	1246	4
District #11				
Chaplin	1621	1700	204	3
Hampton	1129	1100	129	3
Scotland	1022	1000	121	3
District #12				
Bridgewater	1277	1400	323	3
Roxbury	1238	1300	268	3
Washington	3121	3200	641	3
District #13				
Durham	4489	4700	1461	4
Middlefield	4132	4200	990	4
District #14				
Bethlehem	1923	2000	502	4
Woodbury	5869	6300	1429	4
District #15				
Middlebury	5542	5800	1203	4
Southbury	7852	6700	1485	4
District #16				
Beacon Falls	3546	3700	946	4
Prospect	6543	6700	1636	4
District #17				
Haddam	4934	5200	1361	6
Killingworth	2435	2800	724	3
District #18				
Lyme	1484	1600	318	2
Old Lyme	4964	5300	1392	7

District No. 5 is administered by a regional board of education made up of three members from each town who are elected at town meetings, not at town elections.[3] At town meetings a moderator is chosen, and thereafter the meeting is conducted in accordance with parliamentary procedure. None of the general safeguards provided in Connecticut statutes dealing with general elections apply to town meetings.

Sections 10-39 through 10-63i of the Connecticut General Statutes deal specifically with regional school districts, and in addition a number of sections of Title 10, dealing generally with education, have application not only to town school boards but also to regional school boards. Under the statutory scheme, the administrative power over the district is divided between the board of education and the regional district meeting. C.G.S. §§ 10-47, 10-51. A regional district meeting is similar to a town meeting, except that all of the electors in each of the towns in the district are entitled to participate and vote at a regional district meeting. As at town meetings, the regional district meeting operates by electing a moderator and functioning like a parliamentary body. C.G.S. §§ 10-47, 10-51, 7-6, 7-7.

The primary document governing the activities and operations of District No. 5 is the annual budget. The budget is proposed by the regional board, and thereafter must be presented to a district meeting where "any person may recommend the inclusion or deletion of expenditures." After the public hearing, the regional board prepares the annual budget and submits it to the district meeting for approval or disapproval. If the budget is disapproved, the regional board must continue submitting the same or

3. Section 10-46 of the Connecticut General Statutes permits a town to elect members of the Regional Board of Education either in town elections or at town meetings. Bethany, Orange, and Woodbridge all have chosen the town meeting method.

revised budgets to subsequent district meetings until a budget is finally approved. C.G.S. § 10-51.

After the approval of the annual budget, neither the district nor the regional board has power to levy and collect taxes. The board merely allocates to each of the towns in the district its share of the budget in proportion to its number of pupils in the district schools, and the towns pay such amounts to the regional board. C.G.S. §§ 10-51, 10-51a.

The regional board also has no power to issue bonds. The regional district may issue bonds only if the issuance is approved by referendum in the regional school district. C.G.S. § 10-51.

This action was brought on April 4, 1974 by plaintiffs, who reside in Orange, seeking a declaratory judgment that the present apportionment of the regional board of education is unconstitutional, and certain injunctive relief. Jurisdiction is based on 28 U.S.C. § 1343(3) and (4). One of the plaintiffs, Mrs. George, became a plaintiff because the First Selectman of the Town of Orange (the First Selectman is the Town's chief executive officer) and the Chairman of the Democratic Town Committee asked her to become a plaintiff. The other plaintiff, Mr. Baker, the Republican Town Chairman of Orange, became a plaintiff because the Town had to have somebody who was complaining, and he was complaining. Just prior to the filing of the suit, the Board of Selectman of the Town of Orange announced that it had "authorized its attorneys" to bring the suit. The Town of Orange is paying for the suit. Neither of the plaintiffs spoke to their attorney prior to institution of the action. Mr. Baker did not see the complaint before the action was filed, and Mrs. George could not remember whether she first saw it before or after it was filed.

On May 9, 1974, plaintiffs moved for summary judgment. After hearing on June 12, 1974, Judge Newman filed his memorandum of decision on November 22, 1974, declaring

that the apportionment of the regional board was unconstitutional but denying injunctive relief. On January 3, 1975, Judge Newman made a determination and directed judgment in accordance with Rule 54(b), and judgment in favor of the plaintiffs on their claim for declaratory judgment was entered on January 8, 1975. On appeal, the Second Circuit affirmed.[4]

Reasons for Granting the Writ

In *Hadley* v. *Junior College District*, 397 U.S. 50 (1970), this Court held "that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis that will ensure, as far as is practicable, that equal numbers of voters can vote for proportionately equal numbers of officials." 397 U.S. at 56.

But since *Hadley*, it has not had before it a case giving it opportunity to explain what it meant by "popular election," to explain what it meant by "governmental func-

4. Decided with the instant case was *Scott* v. *Nonnewaug Regional School District No. 14*, which seeks reapportionment of the regional board of education of District No. 14, comprising the towns of Woodbury and Bethlehem, Connecticut. The *Scott* defendants are also planning to petition for a writ of certiorari.

Scott was decided on a stipulation of facts, some of which stipulated facts differ from the facts in the instant case. In *Scott*, the defendants have not raised the issues of whether the plaintiff is a proper party and whether the board members are elected by "popular election." Although the instant case and *Scott* were decided together in both courts below, they have never been consolidated under either Rule 42(a) of the Federal Rules of Civil Procedure or Rule 3(b) of the Federal Rules of Appellate Procedure.

tions," and to determine whether the *Hadley* holding has application at all in a case, such as this one, where the powers of the regional board of education are effectively controlled by the regional district meeting and by the referendum. These are important questions of federal law, because *Hadley* has potential application to more than 80,000 units of local government in the United States (*Avery* v. *Midland County*, 390 U.S. 474, 499-500 (1968)), and lower courts require guidance in determining the limits of its applicability. They are particularly important for the fourteen regional school districts in Connecticut (including District No. 5) which, as shown in the table in footnote 2, *supra*, have boards that will probably be reapportioned unless this Court reverses the decision of the Court of Appeals.[5]

a. *"Governmental functions."* In *Hadley*, this Court recognized that an analysis of the powers of the trustees was necessary in order to determine whether the "one person-one vote" principle applied. It said:

> Appellants argue that since the trustees can levy and collect taxes, issue bonds with certain restrictions, hire and fire teachers, make contracts, collect fees, supervise and discipline students, pass on petitions to annex school districts, acquire property by condemnation, and in general manage the operations of the junior college, their powers are equivalent, for apportionment purposes, to those exercised by the county commissioners in *Avery*. We feel that these powers, while not fully as broad as those of the Midland County Commissioners, certainly show that the trustees perform important governmental functions within the districts, and we think these powers are general enough and have sufficient impact through-

5. The contingency legislation referred to in footnote 2 of the decision of the Court of Appeals, Appendix I, *infra*, p. 3a, will not become effective unless and until this case and *Scott* are finally resolved in plaintiffs' favor.

> out the district to justify the conclusion that the principle which we applied in *Avery* should also be applied here. 397 U.S. at 53-54

It also described the powers of the county commissioners involved in *Avery* v. *Midland County*, 390 U.S. 474 (1968):

> The Midland County Commissioners established and maintained the county jail, appointed numerous county officials, made contracts, built roads and bridges, administered the county welfare system, performed duties in connection with elections, set the county tax rate, issued bonds, adopted the county budget, built and ran hospitals, airports, and libraries, fixed school district boundaries, established a housing authority, and determined the election districts for county commissioners. 397 U.S. at 53-54 n.6.

Avery and *Hadley* are the only two cases in which this Court has decided whether or not one person-one vote principles were applicable to a popularly-elected local governmental body.[6] This Court has never decided the important Constitutional question of what minimum kind and quantity of powers a local governmental body must have in order for one person-one vote principles to be applicable. Clearly there is some minimum, or this Court would not have compared in the *Hadley* opinion the powers of the *Hadley* trustees and the *Avery* commissioners, and commented that the powers of the Hadley trustees were "general enough and have sufficient impact throughout the dis-

6. Other cases, such as *Kramer* v. *Union Free School District*, 395 U.S. 621 (1969), *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719 (1973), and *Associated Enterprises, Inc.* v. *Toltec District*, 410 U.S. 743 (1973) decided whether or not popular elections (rather than elections where only certain people could vote) were required for particular local governmental bodies; *Abate* v. *Mundt*, 403 U.S. 182 (1971) decided that the reapportionment plan for the local governmental body there involved met Constitutional standards.

trict" to make one person-one vote principles applicable.[7] In the absence of a minimum stated by this Court, lower courts have applied the principles of *Avery* and *Hadley* to numerous local governmental units, almost invariably holding one man-one vote principles to be applicable.

Whatever the minimum kind and quantity of powers required to make one person-one vote principles applicable, the regional board of education in this case must fall below it. It cannot adopt its budget; it cannot levy and collect taxes; it cannot issue bonds or otherwise borrow money except upon prior approval either by referendum in the district or by the regional district meeting; it cannot annex or otherwise add to the school district. Even the powers it does have, such as the power to acquire property for school purposes, the power to build schools and the power to enter into contracts, are severely circumscribed by its lack of taxing and borrowing power.

b. *Control by regional district meeting and referendum.* In the one person-one vote cases, the test under the Equal Protection Clause is whether there is "invidious discrimination." *Reynolds* v. *Sims*, 377 U.S. 533, 561 (1964), *Dusch* v. *Davis*, 387 U.S. 112, 116 (1967), *Salyer Land Co.* v. *Tulare Water District*, 410 U.S. 719, 725 (1973). But the discrimination alleged in this case, that the voters of Orange (which has 55% of the District's population) elect only 33⅓% of the members of the regional board of education, is not invidious, because the voters of the District, both through the regional district meeting (which has the sole power to adopt the annual budget and to approve certain borrowing) and through the referendum (necessary to approve bonding), effectively control the exercise of power by the regional board of education. Thus, although mem-

7. In addition, *Wells* v. *Edwards*, 409 U.S. 1095 (1973) affirmed a lower court's holding that one man-one vote principles did not apply to the judiciary.

bership on the regional board of education is not proportionate to population, this fact is not controlling here, because the regional district meeting and the referendum (at both of which one person-one vote prevails) cause any discrimination not to be invidious.

This Court has said that "the Constitution does not require that a uniform straightjacket bind citizens in devising mechanisms of local government suitable for local needs and efficient in solving local problems," and that "the Constitution and this Court are not roadblocks in the path of innovation, experiment, and development among units of local government." *Avery* v. *Midland County,* 390 U.S. 474, 485 (1968). But it has never had an occasion to examine a mechanism whereby a representative body (the regional board of education) has its exercise of power effectively controlled by a democratic body, the regional district meeting,[8] or by its equivalent, the referendum. Such an examination, which the courts below failed to undertake, will show that the *Hadley* rule should not apply here.

c. *"Popular Election."* By its terms, *Hadley* is only applicable to officials elected by "popular election" (397 U.S. at 56), and it is clear that the *Hadley* Court understood "popular election" to mean an election in which "citizens participate individually by ballot." 397 U.S. at 54. "Ballot" means secret voting. Webster's Third New International Dictionary 168.

But in the instant case, the members of the regional board of education are elected at town meetings in each town.[9] At a town meeting, a moderator is chosen by the

8. Judge Swift, in his "System of the Laws of the State of Connecticut" (1795), speaks of the town meeting as "an epitome of a pure, unmixed, democracy." 1 Swift's System 116.

9. Under Connecticut law, members of regional boards of education may be elected either in town meetings or in town elections. C.G.S. § 10-46. In *Scott,* the parties stipulated merely that the members of their regional board were elected, without indicating how.

assembled electors of the town, and thereafter the meeting is conducted as if it were a parliamentary body. Nominations are from the floor, and voting is by voice vote or show of hands. Appendix I, *infra*, p. 5a, n.7. None of the usual attributes of popular election, such as primaries, absentee ballots, polls open for a period of time, voting machines or paper ballots,[10] and formal procedures for canvassing election results are applicable.

Although the same electors may participate and vote at a town meeting for election of members of the regional board of education as may vote in a town election, they do so in a different capacity. At a town meeting they are acting and voting as members of the municipal corporation, *Bloomfield* v. *Charter Oak Bank*, 121 U.S. 121, 129 (1887), rather than as individual voters as at a popular election. They are engaging in an exercise of pure democracy, 1 Swift's System 116 (1795), rather than of representative government. It is the institution of representative government, not pure democracy, that is the bedrock from which the one person-one vote principle springs. *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964). Accordingly, one person-one vote principles should not be extended to the election at town meeting of members of the regional board of education.

2. This is really a suit by the Town of Orange, which chose the plaintiffs, announced through its Board of Selectmen that it had "authorized its attorneys" to bring the suit, and is paying for the suit.[11] Obviously the Town of Orange cannot itself complain that it is being deprived of equal protection in connection with voting rights, since it cannot

10. When petitioned for by 200 persons twenty-four hours before the meeting, voting machines or paper ballots must be used for voting on questions coming before the town meeting. C.G.S. § 7-7.

11. Since plaintiffs' motion for summary judgment was heard two months after the complaint was filed, there was little time for other occurrences showing that this is a suit by the Town of Orange.

vote, and there is a question as to whether the Town could even bring suit in a representative capacity. *Baker* v. *Carr,* 369 U.S. 186, 204 (1962). Therefore it is understandable that the Town chose to bring the suit in the names of Mr. Baker and Mrs. George, two residents and electors of the Town.

Although defendants raised both in the District Court and in the Court of Appeals the interrelated issues of standing, justiciability, and jurisdiction, both Courts held for plaintiffs on these issues on narrow grounds. Appendix III, *infra,* p. 13a, n.5; Appendix I, *infra,* p. 4a, n.6. But neither Court dealt with those issues in the broader context in which defendant raised them: May and should the federal courts entertain a suit where a person or organization, such as the Town of Orange, wishes to assert constitutional rights which it does not itself possess, and therefore brings suit in the name of plaintiffs, such as Baker and George, who do possess those rights but are merely acting as agents or strawmen for the initiating organization. This Court has never decided this important question, although it has decided some closely related questions.

In *United States* v. *Beebe,* 127 U.S. 338 (1888), the United States had brought suit to set aside land patents issued by it many years earlier, which it alleged had been fraudulently obtained by the defendant. The suit had been brought at the behest of persons who claimed that they were entitled to the land. The defendant raised the defense of laches. This Court held that even though the United States had the right and duty to bring the suit to set aside the patent, and even though laches could not be raised as a defense against the United States, the persons who claimed to be entitled to the land were the real parties in interest and laches was therefore a good defense.

In *Cashman* v. *Amador & Sacramento Canal Co.,* 118 U.S. 58 (1886), a diversity case, the County of Sacramento

wished to bring suit in Federal Court, but, because there was no diversity, could not do so. It therefore solicited Cashman, an alien, who also had rights against the defendant, and entered into an agreement with him that it might bring suit in his name. This Court affirmed a dismissal for lack of jurisdiction under the predecessor of 28 U.S.C. § 1359.

N.A.A.C.P. v. *Button,* 371 U.S. 415 (1963) does not deal with the issue raised by petitioners here since it deals with the N.A.A.C.P.'s solicitation of plaintiffs in First Amendment terms.

The Courts below failed to focus on the question of whether plaintiffs are proper parties which is the essence of the doctrine of standing:

> The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wished to have adjudicated. . . . In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable. . . . A proper party is demanded so that federal courts will not be asked to decide 'ill-defined controversies over constitutional issues,' . . . *Flast* v. *Cohen,* 392 U.S. 83, 99-100 (1968)

This Court should resolve that question.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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J. Michael Eisner,
Attorneys for Petitioners.

Of Counsel:
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Frederick S. Moss

September 1975.

Conclusion

The petition for a writ of certiorari should be granted.

Respectfully submitted

R. Lincoln Harvey,
J. Michael Galvin,
Attorneys for Petitioner.

Of Counsel:

Gerald P. Dwyer,
Lawrence R. Mann,

September 1973.

APPENDIX I

UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

Nos. 845, 898-99, 921-22—September Term, 1974.

(Argued June 6, 1975 Decided July 23, 1975.)

Docket Nos. 75-7001, 75-7009, 75-7015, 75-7039-40

JOHN E. BAKER and GERALDINE S. GEORGE,

Appellees,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, JAMES BERRY, SIDNEY SVIRSKY and JEAN HANNA,

Appellants.

JOSEPH M. SCOTT, SR.

Appellee,

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, *et al.*,

Appellants.

B e f o r e—SMITH, ANDERSON and OAKES, *Circuit Judges.*

Appeal from a decision of the United States District Court for the District of Connecticut, Jon O. Newman, *Judge,* which held on motion for summary judgment that certain Connecticut regional school boards performed a range of activities sufficiently extensive to require the application of one person-one vote principles. Held that not-

withstanding the fact that the boards in question could neither levy taxes nor issue bonds, their powers were governmental in nature, thus requiring that election to the boards be in accordance with one person-one vote principles.

OAKES, *Circuit Judge:*

At issue in this appeal is the applicability of one person-one vote principles (*Reynolds* v. *Sims*, 377 U.S. 533 (1964), and *Wesberry* v. *Sanders*, 376 U.S. 1 (1964)) to the election of school board members in two Connecticut regional school districts.[1] The districts in question are each comprised of towns with substantial population differences, but, as presently organized, each participating town has an *equal* number of elected representatives serving on the regional school board and voting with equal weight. The United States District Court for the District of Connecticut, Jon O. Newman, *Judge*, relying on *Hadley* v. *Junior College District*, 397 U.S. 50 (1970) (trustees of a junior college school district performing governmental functions must be elected in accordance with one person-one vote standards); *Avery* v. *Midland County*, 390 U.S. 474 (1968) (applying one person-one vote standards to the election of county officials); *Rosenthal* v. *Board of Education of Central High School District #3*, 497 F.2d 726 (2d Cir. 1974) (finding a substantial federal question presented by a requested application of one person-one vote principles to an elected school board which had the power to issue bonds and propose taxes); *Leopold* v. *Young*, 340 F. Supp. 1014 (D. Vt. 1972) (applying one person-one vote standards to a school board with substantial public functions),

1. A number of other districts throughout Connecticut will presumably be affected by this decision since most, although not all, of Connecticut's regional boards are not apportioned on the basis of one person-one vote. The statutes under which regional school districts were created did not require malapportionment, but permitted towns to agree among themselves on the terms of their consolidation.

held, on motion for summary judgment, that the school boards in question performed a range of governmental activities sufficiently extensive to require the application of one person-one vote principles.[2] We affirm.[3]

The facts presented by these two consolidated appeals are the same in all significant aspects. The school district in *Scott*, Connecticut Regional District No. 14 (Nonnewaug), is comprised of two towns, Woodbury (population 5,869) and Bethlehem (population 1,923). As of May, 1973, 1,887 pupils were attending the school district with 1,385 from Woodbury and 492 from Bethlehem. For each of the three years ending with 1973-74, Woodbury contributed to the regional district budget in an amount equal to two and one-half times the amount contributed by Bethlehem. Each of the towns, however, is equally represented on the regional school board by four members.

The school district in *Baker* is comprised of three towns, Bethany (population 3,857), Woodbridge (population 7,673), and Orange (population 13,524). The average[4] number of pupils in the district is 3,377, with 543 pupils from Bethany, 998 from Woodbridge and 1,835 from Orange. Orange contributed in 1972-73 55.04 per cent of

2. In fashioning a remedy for these constitutional violations, Judge Newman, whose opinion is unpublished, granted declaratory relief only. His denial of injunctive relief was premised on his unwillingness "to disrupt on-going educational activities pending legislative action." In response to Judge Newman's decision, we are advised, the Connecticut General Assembly has enacted contingency legislation which would apply one person-one vote principles to school districts, while providing that towns so inclined may withdraw from regional school districts. (H.R. Bill No. 6596.)

3. Jurisdiction is grounded upon 28 U.S.C. § 1343(3), and injunctive and declaratory relief was sought under 42 U.S.C. § 1983, 28 U.S.C. § 2201. A three-judge court is not required as there is no facial attack on the Connecticut statutes which create regional boards, and any special acts involved relate only to the particular district involved and hence are not of statewide applicability.

4. An average student census was compiled from the actual daily membership as of June, 1973; October, 1973; and February, 1974.

the total school budget, with Bethany's share amounting to 15.62 per cent and Woodbridge's 29.34 per cent. However, each of the three towns is equally represented on the regional board by three members. In both districts, the members of the boards are selected through an elective process.[5]

Plaintiffs-appellees in both *Scott* and *Baker* are residents, taxpayers and electors of Woodbury and Orange respectively,[6] who claim that the present apportionment on their regional boards of education dilutes their voting power and deprives them of the equal protection of the law. The critical question on this appeal therefore is whether these school boards are elective bodies performing regulatory functions of a kind that can be characterized as governmental. *Hadley* v. *Junior College District,* 397 U.S. at 53-54. An affirmative answer to this question requires the additional finding that the boards are constructed unconstitutionally, since all parties concede that their members are not elected according to strict one person-one vote principles, nor do they vote in accordance with any kind of weighted formula which would reflect the population differences in the towns they represent.

The towns in *Scott* elect members directly to the school board; the towns in *Baker,* however, maintain that their regional board is not elective in the sense the Supreme Court intended for application of the one person-one vote principle. The essence of this claim is that the board

5. See text at note 7 *infra.*

6. The *Baker* appellants maintain that this court's jurisdiction has been improperly invoked through "collusive joinder." Their theory seems to be that voters of the town are not the real parties in interest here. Fed. R. Civ. P. 17(a). It is, however, the electors whose vote is being diluted and as such their interests are quite properly before the court. This is clearly not a case where collusion has been used to manufacture diversity jurisdiction.

members are "appointed" through a "legislative" town meeting[7] rather than elected through a "popular election." We find no merit to this line of argument. While the forum for selecting board members was a town meeting, any person who was an elector of the town had the right to cast a vote at the meeting, and the majority prevailed. The suggested distinction is one of form, not substance.

On the question whether the board is governmental in character, appellants make much of the powers which the school boards lack. By reading *Hadley* v. *Junior College District* as narrowly as possible, they maintain that, since the Connecticut regional boards lack the powers to levy and collect taxes and to issue bonds, then their powers are not sufficiently broad or general to be governmental. But as Judge Newman recognized in his opinion below, "[t]he proper question is rather whether the power the Boards *do* have, in fulfilling what 'has traditionally been a vital governmental function,' *Hadley* v. *Junior College District*, 397 U.S. at 56, make it reasonable to describe the board members as 'governmental officials in every relevant sense of the term.' *Ibid.*"

The powers of Connecticut's regional school districts are detailed in what is now Chapter 164 of the Connecticut General Statutes,[8] with Conn. Gen. Stats. § 10-47 providing as follows:

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7. In the traditional town meeting, a moderator is chosen by the assembled electors of the town, and thereafter the meeting is conducted as if it were a parliamentary body.

8. The *Baker* appellants maintain that there are material facts in issue concerning the powers of the boards so as to preclude a summary judgment. Because the regional boards' powers are statutory and are for our purposes unambiguous summary judgment was properly rendered in the present case. *See Leopold* v. *Young*, 340 F. Supp. at 1015.

> Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and and personal property for the purposes of the regional school districts. . . .

In the area of school financing, a regional board may authorize bond anticipation notes for periods of up to four years, and may treat the proceeds of the notes as other school districts or municipalities. Conn. Gen. Stats. § 10-56(c)-(d). In addition, the board may also borrow money for periods up to five years. Conn. Gen. Stats. § 10-60. While such actions by the board must be *approved* by the voters of the regional district in a referendum, it is or should be clear that this does not substantially undercut the significance of the boards' function. As stated in the amicus brief of the town of New Hartford, "*whether* to propose a bond ordinance, for what *purpose, when,* for *how much,* and in what *form* are all within the exclusive jurisdiction of the regional board." While the voters have the final word, what they ratify or disapprove can be only what the board decides to present to them. *See also Leopold* v. *Young, supra.*

Similarly, with respect to the budget-making process, the board has the exclusive power to initiate and propose. The voters may choose not to ratify, but it is within the sole power of the board to draw up the budget, and if it

is disapproved, the board then decides whether to amend and how to amend. Conn. Gen. Stats. § 10-51.

In addition, the regional school boards hire and fire teachers, supervise and discipline students, and in general manage all of the schools within their district.[9] As such, there can be no question but that the board members

> perform important governmental functions within the districts and . . . these powers are general enough and have sufficient impact throughout the district to justify the conclusion that [one person-one vote] should be applied here.

Hadley v. *Junior College District*, 397 U.S. at 53-54.

With respect to collective bargaining agreements, again the contract is negotiated by the board; a district meeting must ratify the board's action only if the chief executive officer of a constitutent town requests that a meeting be called. Conn. Gen. Stats. § 10-153d.

The power to tax is not a sine qua non to a determination that a local board serves a governmental function. The regulatory and supervisory powers possessed by the regional boards here at issue are sufficiently broad to be classified as governmental activity. *See generally Powers* v. *Maine School Administrative District No. 1*, 359 F. Supp. 30 (D. Me. 1973); *Leopold* v. *Young, supra.*[10]

Appellants' last line of argument focuses upon the Supreme Court's decisions in *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973).

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9. Nor is this a complete list of the boards' powers and duties. The boards also have duties in connection with school curriculum, transportation and a wide range of support services. In short, this is not a case like *Sailors* v. *Board of Education*, 387 U.S. 105 (1967), where an appointed school board, whose duties were largely administrative, was exempted from application of one person-one vote principles.

10. Nor does having the power to tax make a given body governmental in nature. *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District*, 410 U.S. 719 (1973).

and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District*, 410 U.S. 743 (1973), to diminish the force of *Hadley*. In *Salyer* and *Toltec* the Court held that one person-one vote principles did not apply to the election of members of the governing board of a California water and a Wyoming watershed district. Since the districts in issue in *Salyer* and *Toltec* had a "special limited purpose" and since the districts' action had a substantially "disproportionate effect . . . on landowners as a group," 410 U.S. at 728, 410 U.S. at 744, it was acceptable for the officers of the district to be elected by weighted vote of the district's landowners. The regional school boards' impact is general and related to all voters of the towns as such. In *Salyer*, the Court was careful to note that it was the land which was being benefited and the landowners only paying the costs; the Court also emphasized that the water district "provides no other general public services *such as a school.*" *Id.* at 728-29 (emphasis added). Here we have school districts in which those towns which are paying the most for the districts' support have to accept a diluted vote[11] in the running of the schools. *Salyer* and *Toltec* are simply not relevant. The boards here are elective bodies serving governmental functions. They must be organized to reflect one person-one vote principles.

Judgment affirmed.

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11. It is of no aid to appellants that the manner in which the regional boards were to be organized was voted upon and accepted by a majority of the voters of each of the towns in the district. As the Supreme Court held in *Lucas* v. *Forty-fourth General Assembly of Colorado*, 377 U.S. 713, 736-37 (1964):

> An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act.

Nor is the fact that the districts were formed pursuant to agreement of the towns. *See Leopold* v. *Young, supra.*

APPENDIX II

UNITED STATES COURT OF APPEALS

FOR THE

SECOND CIRCUIT

At a stated Term of the United States Court of Appeals for the Second Circuit, held at the United States Courthouse in the City of New York, on the twenty-third day of July one thousand nine hundred and seventy-five

Present—Hon. J. JOSEPH SMITH,
Hon. ROBERT P. ANDERSON,
Hon. JAMES L. OAKES, *Circuit Judges.*
75,7001, 75-7009, 75-7015, 75-7039, 75-7040.

JOHN E. BAKER, and GERALDINE S. GEORGE,

Appellees,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, MRS. MARION P. CROCCO, MR. GEORGE P. DAVIS, JR., MRS. JEAN VIRSHUP, MR. LOUIS KUTZNER, MRS. JEAN S. MIDDLETON, DR. FREDERICK STEIGERT, MRS. FRANK GRUSKAY, DR. HERBERT HERSHENSON, and MR. LEONARD LOHNE, individually and in their official capacities as members of the REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, DOUGLAS J. SMITH, individually and in his official capacity as Acting Superintendent OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, MR. FREDERICK ROSS, MR. HENRY W. BENEDICT, MR. HARRY I. WILSON, as Treasurers respectively of the Towns of Orange, Bethany, and Woodbridge, and MRS. MARJORIE B. WAHNQUIST, MR. SIDNEY SVIRSKY and MRS. JEAN HANNA, as Town Clerks respectively of the Towns of Orange, Bethany and Woodbridge,

Defendants,

REGIONAL HIGH SCHOOL DISTRICT NO. 5 and REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, JAMES BERRY, as Treasurer of the Town of Woodbridge (succeeding HARRY I. WILSON, deceased)

Defendants-Appellants,

JOSEPH M. SCOTT, SR.,

Plaintiff-Appellee,

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, THE TOWN OF WOODBURY, CONNECTICUT, THE TOWN OF BETHLEHEM CONNECTICUT, TOWN OF WOODBURY, and SAMUEL J. SWENDSEN, FIRST SELECTMAN, TOWN OF BETHLEHEM,

Defendants

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, TOWN OF BETHLEHEM,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF CONNECTICUT.

This cause came on to be heard on the transcript of record from the United States District Court for the District of Connecticut, and was argued by counsel.

ON CONSIDERATION WHEREOF, it is now hereby ordered, adjudged, and decreed that the judgment of said District Court be and it hereby is affirmed with costs to be taxed against the appellants.

APPENDIX III

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. B-538
Civil No. N-74-75

JOSEPH M. SCOTT, SR.

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, *et al.*,

JOHN E. BAKER, *et al.*

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, *et al.*

MEMORANDUM OF DECISION

These motions for summary judgment present identical questions concerning the applicability of one person-one vote principles to boards of education of Connecticut's regional school districts. See generally, Conn. Gen. Stat. §§ 10-39 to 10-63i. Plaintiff in Civil No. B-538 (*Scott*), a resident, taxpayer, and elector of the Town of Woodbury, seeks the reorganization of the Board of Education of Nonnewaug Regional School District No. 14, which administers the joint elementary and secondary school systems of the Towns of Woodbury and Bethlehem.[1] In Civil No. N-74-75 (*Baker*),

1. Plaintiff Scott seeks to pursue the suit as a class action. Since "any equitable relief to which [plaintiff] may be entitled would benefit all persons similarly situated, there is no compelling reason to designate a class." *Bridgeport Guardians, Inc.* v. *Members of Bridgeport Civil Service Commission*, 354 F. Supp. 778, 783 (D. Conn. 1973), *modified on other grounds*, 482 F.2d 1333 (2d Cir. 1973). Class action designation is accordingly denied.

plaintiffs are residents, taxpayers, and electors of the Town of Orange, and they seek re-organization of the Board of Education of Regional High School District No. 5, which includes the Towns of Orange, Bethany and Woodbridge.

The defendants in *Scott* are Regional District No. 14, the chairman of the District's Board of Education, the Towns of Woodbury and Bethlehem, and the First Selectman of each Town.[2] In *Baker* the defendants are Regional District No. 5, its Board of Education and the members of the Board, the District's superintendent, and the treasurers and clerks of the Towns of Orange, Woodbridge and Bethany.

In addition, the Towns of Bethany and Woodbridge have moved to intervene as defendants in *Baker*. They argue that they have significant interests not adequately protected by the present defendants, and that only they are properly situated to protect the interests of their residents and electors.[3] However, the elected representatives of the voters who are already parties to this action are equal to that task. *Cf. Powers* v. *Maine School Administrative District No. 1*, 359 F.Supp. 30(D. Me. 1973); *Leopold* v. *Young*, 340 F.Supp. 1014 (D. Vt. 1972). The Towns as such do not have any substantial interest in the controversy; they are merely election districts from which board members are chosen. *Cf. Butterworth* v. *Dempsey*, 229 F.Supp. 754, 798-99 (D. Conn. 1964) (three-judge court), *aff'd sub nom. Town of Franklin* v. *Butterworth*, 378 U.S. 562 (1964). See *Reynolds* v. *Sims*, 377 U.S. 533, 562 (1964). Moreover, an appropriately fashioned remedy will adequately protect the Towns. See 3A Moore's Federal Practice ¶ 19.07-2[2]. The motions to intervene are denied.

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2. The Town of New Hartford has moved to appear in *Scott* as *amicus curiae*. The motion is granted.

3. Other defendants have raised the same issue in the form of an affirmative defense alleging that the Towns are necessary parties without whose joinder the action cannot go forward, Fed. R. Civ. P. 19.

In both actions plaintiffs argue that the present apportionment of membership on their respective regional boards of education impermissibly dilutes their voting power and deprives them of the equal protection of the laws. They claim jurisdiction under 28 U.S.C. §1343(3), and request a variety of injunctive relief pursuant to 42 U.S.C. §1983. In *Scott* the parties have stipulated to the material facts,[4] and both actions are before the Court on motions for summary judgment.[5]

Preliminarily, the *Baker* defendants dispute this Court's jurisdiction and urge that a three-judge court must be convened to hear the suit. They rely primarily on Judge Tim-

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4. Defendants in *Baker* note that in their action the parties have not entered into a stipulation and urge that summary judgment is inappropriate because a triable issue of fact is presented by disagreement about the powers of their Board. There is no dispute, however, that the powers of the Boards are defined by the Connecticut General Statutes, compare *Education/Instruccion, Inc.* v. *Moore*, F.2d (2d Cir. 1974), Slip op. at 5321 (August 21, 1974) (Oakes, J. dissenting); the only disagreement is whether as a matter of law the powers conferred by statute are sufficient to bring the Boards within apportionment requirements.

5. The *Baker* defendants oppose summary judgment on the ground that the plaintiffs are not real parties in interest, Fed. R. Civ. P. 17(a), and on the additional ground that jurisdiction of this Court has been invoked by "improper or collusive joinder," 28 U.S.C. § 1359. Rule 17(a) is designed to make certain that an action is brought by one who, by the substantive law, has the right sought to be enforced. *Rackley* v. *Board of Trustees of Orangeburg Regional Hospital*, 35 F.R.D. 516 (E.D. S.C. 1964); 3A Moore's Federal Practice ¶ 17.07, text at n. 1. But as this opinion explains, text following n. 2, *supra*, the right sought to be protected in this case is that of the Orange electors in an undiluted vote. Section 1359 is similarly designed to prevent collusive attempts to "manufacture" diversity jurisdiction, *O'Brien* v. *Avco Corporation*, 425 F.2d 1030 (2d Cir. 1969). It thus has no application in the present context. Moreover, even if, as defendants allege, officials of the Town of Orange solicited plaintiffs' participation, and even if the Town of Orange is paying the expenses of the litigation, it does not follow that there has been the kind of "collusion" at which the statute is directed *Allstate Ins. Co.* v. *Lumbermens Mutual Casualty Co.*, 204 F.Supp. 83 (D. Conn. 1962).

bers' tentative opinion in *Giordano* v. *Amity Regional High School District #5*, 313 F.Supp. 403 (D. Conn. 1970). The simple answer to this claim is one not raised by the parties in *Giordano* (although recognized as persuasive by Judge Timbers, 313 F.Supp. at 408-09, n. 9), but pressed strenuously by all plaintiffs in the present actions. Plaintiffs here do not seek to enjoin enforcement of a statute of statewide application. Compare *Hadley* v. *Junior College District of Metropolitan Kansas City*, 397 U.S. 50, 57 (1970), with *Leopold* v. *Young*, 340 F.Supp. 1014, 1017 (D. Vt. 1972). The Connecticut statutory system at issue "does not require malapportionment, but only permits towns to agree among themselves on the terms under which they will consolidate, including the apportionment of school board members." *Ibid.* See *C. Wright, Handbook of the Law of the Federal Courts* 190, text at n. 21 (1970).

The situation is no different as to Special Act 74-69, regardless of the interpretation placed on it. If, as plaintiffs urge, it merely sets the time at which board members will take office, there is no question of enjoining its enforcement. And even if, as defendants urge, it represents a "fixing" of the present apportionment of board members, it applies by its terms only to District No. 5 and is therefore not a statute of statewide application.

Moreover, as the remainder of this opinion makes clear, the law has progressed considerably since *Giordano*, and what Judge Timbers concluded was a question requiring three judges for resolution is now so clearly settled that the issue lacks the substantiality requiring a three-judge court. In such circumstances a single judge possesses the power to dispose of the case. *Bailey* v. *Patterson*, 369 U.S. 31 (1962); *Anderson* v. *Nemetz*, 474 F.2d 814 (9th Cir. 1973); *Consumer Party* v. *Tucker*, 364 F.Supp. 594, 604 (E.D. Pa. 1973). See *Utica Mutual Ins. Co.* v. *Vincent*, 375 F.2d 129, 131 n. 1 (2d Cir. 1967).

Regional District No. 14 began operating on July 1, 1968, having been approved several months earlier by separate referenda conducted in Woodbury and Bethlehem. The District's board consists of eight members, with four chosen by the electors of each of the two member towns. Plaintiff Scott bases his objection to the equal division of the membership on a comparison of the populations of the two communities. According to the 1970 census, Woodbury's population was 5,869 and Bethlehem's was 1,923, and of the 1,887 pupils attending school in the District as of May, 1973, 1,385 were from Woodbury and 492 were from Bethlehem. Finally, for each of the three consecutive academic years ending with 1973-74, Woodbury's contribution to the Regional District's budget was approximately two and one-half times as large as Bethlehem's. In short, plaintiff complains that Woodbury has roughly 75% of the joint district's population and pupils, and contributes a similar proportion of the joint district's budget, but has only 50% of the votes on the body that administers the District.

The comparable statistics for District No. 5, which commenced operations in the 1952-53 academic year, reflect a similar imbalance. Orange, the largest of the three towns, has approximately 55% of the population, 55% of the student body, and contributes 55% of the District's budget. Bethany accounts for approximately 15% of each category, and Woodbridge 30%. Each Town, however, elects three members of the nine-member joint Board of Education.

Defendants do not dispute the contention that the votes of the Woodbury and Orange electors are in fact substantially diluted. *Cf. Powers* v. *Maine School Administrative District No. 1, supra,* 359 F.Supp. at 35. Nor do they seriously contest the proposition that because the members of the Regional Boards are chosen by election[6] the one per-

6. The *Baker* defendants do suggest that the town meetings from which their Board members are elected are exercises of legislative

son—one vote rules must apply. *E.g., Hadley* v. *Junior College District of Metropolitan Kansas City,* 397 U.S. 50, 54 (1970); *Rosenthal* v. *Board of Education of Central High School District No. 3 of Town of Hempstead,* 497 F.2d 726, 729 (2d Cir. 1974).

On the merits of the motions for summary judgment defendants press only two contentions. The first is that the Regional Boards whose composition is at issue perform an insufficiently broad range of governmental functions and are therefore not the type of elective bodies to which apportionment requirements apply. Compare *Salyer Land Co.* v. *Tulare Lake Basin Water Storage District,* 410 U.S. 719, 728-29 (1973). Both Regional Boards lack several significant powers that were possessed by the junior college board of trustees in *Hadley,* and defendants contend that these were essential both in *Hadley* and in similar cases. These include the power to levy and collect taxes, to issue bonds, and to pass on petitions to annex school districts and acquire property by condemnation.

Defendants' approach, enumerating the powers that these Regional Boards lack, is misconceived. *Cf. Hadley* v. *Junior College District, supra,* 397 U.S. at 53-54; *Rosenthal* v. *Board of Education, supra,* 497 F.2d at 728. The proper question is rather whether the powers the Boards *do* have in fulfilling what "has traditionally been a vital governmental function," *Hadley* v. *Junior College District, supra,*

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power and not "popular elections" within the meaning of *Hadley,* and that one person-one vote requirements for that reason do not apply. Defendants do not dispute, however, that in each member town all registered voters are eligible to vote for board members, Conn. Gen. Stat. § 10-46(b). Nothing in *Hadley* indicates that the Court intended to limit its holding to elections of a particular type. On the contrary, Justice Black took pains to observe that at the center of each of the Supreme Court's reapportionment cases was "the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions." 397 U.S. at 54. To accept the consequences of defendants' characterization would be to exalt form over substance at the expense of the right to vote.

397 U.S. at 56, make it reasonable to describe the board members as "government officials in every relevant sense of that term." *Ibid.*

With the question thus posed, the answer becomes clear. The powers of the two Boards before this Court do not differ significantly from those of the Board in *Rosenthal, supra,* and the only question that troubled the Court of Appeals in *Rosenthal* was whether the manner of selection of board members was more nearly elective than it was appointive; it was obvious to the Court that if the board members were elected, their powers were sufficiently governmental to invoke one person-one vote requirements. 497 F.2d at 729, text at n. 10. As the Court of Appeals has more recently observed, "there was no question [in *Rosenthal*] that the body in question performed substantial governmental functions."[7] *Education/Instruccion, Inc.* v. *Moore,* —— F.2d ——, —— (2d Cir. 1974), Slip op. at 5320 (August 21, 1974). Compare, *e.g., Dameron* v. *Tangipahoa Parish Police Jury,* 315 F.Supp. 137, 138 (E.D. La. 1970). See also, *Regional High School District No. 3* v. *Town of Newtown,* 134 Conn. 613, 620-21 (1948).

Defendants' second argument relies on dictum in *Avery* v. *Midland County,* 390 U.S. 474 (1968). They suggest that regional districts are a form of educational innovation and are for that reason immune from judicial interference, even interference in the name of equal protection. Defendants contend that requiring equal apportionment will make it unlikely that smaller towns will join regional districts, and that a legitimate attempt by the State to provide for more efficient operation of schools and improved educational opportunity for students will thereby be frustrated.

In *Avery,* which held that elections for County Commissioners Court in Texas must be conducted in accordance

7. The *Rosenthal* Board also lacked the power to set taxes. 497 F.2d at 728, n. 7 and accompanying text.

with principles of voting equality, the Supreme Court acknowledged in passing that local governments are under immense pressures to solve local problems, and denied that such experimentation is foreclosed by the Constitution. The two cases cited by the Court, however, indicate that these observations were in no way intended to encourage retreat from the Constitutional imperative. *Sailors* v. *Board of Education,* 387 U.S. 105 (1967), exempted a board whose members were appointed and whose duties were administrative, and in *Dusch* v. *Davis,* 387 U.S. 112 (1967), the Court upheld residence requirements imposed on the *members* of a multicounty legislative body, finding that the voting power of the *electors* of the component counties was not diluted. Defendants express a legitimate concern in urging that there be no needless thwarting of experimentation with regional arrangements in general or in the field of education in particular. The desirability of such arrangements, however, cannot suspend the Fourteenth Amendment's apportionment requirements. If regional school districts are to be encouraged, it will have to be done by creative legislative authorization and cooperative local arrangements that resolve the competing large and small town interests within Constitutional standards. Although the Constitution leaves a great deal of room for legitimate experimentation and innovation, it also "imposes one ground rule for the development of arrangements of local government: a requirement that units with general governmental powers over an entire geographic area not be apportioned among . . . districts of substantially unequal population." *Avery* v. *Midland County, supra,* 390 U.S. at 485-86.

The only question remaining is one of remedy. Plaintiffs in both actions have requested a broad range of coercive injunctive relief, both permanent and interlocutory. Plaintiffs have clearly established that they are entitled to a

declaratory judgment, but it does not follow that the requested permanent mandatory injunction is also appropriate at this time. While it is true that the violations could be cured without legislative action, compare *Hadley* v. *Junior College District, supra,* the relatively few options presently available to defendants were designed by a legislature that may well have thought that regional districts would be free from one person-one vote requirements. Respect for the pre-eminence of the states in matters of educational policy requires, therefore, that the legislature be given a reasonable opportunity to develop new alternatives in light of this Court's declaration before an injunction issues requiring defendants to act. *Cf. Powers* v. *Maine School Administrative District No. 1, supra.* For example, the legislature may want to consider the procedures for forming new districts and for dissolving, or permitting withdrawal from, present districts now that one person-one vote principles are applicable. The General Assembly is to convene in January and should have at least two months to consider whether it wishes to frame legislation responsive to the concerns of these and other aspects of regional districts. Permanent injunctive relief will therefore be denied, without prejudice to a renewed application after March 1, 1975. At any time prior to that date, any parties may submit to the Court their proposals for reapportionment plans and implementation procedures, which the Court will review before formulating a final decree after March 1, 1975.

With respect to the requests for interim relief pending entry of a final decree, the Court is not willing needlessly to disrupt on-going educational activities pending legislative action. The requested decrees would work a substantial departure from the status quo, and the request for such relief is therefore denied. Plaintiffs are free to seek supplemental interim relief if it should appear that the

Regional Districts are about to undertake substantial building programs or make other substantial capital commitments.

Accordingly, plaintiffs' motions for summary judgment are granted,[8] and judgment will enter declaring that the allocation of membership on the Boards of Education of Nonnewaug Regional School District No. 14, and of Regional High School District No. 5, deprives plaintiffs of the equal protection of the laws in violation of the Fourteenth Amendment.

Dated at New Haven, Connecticut, this 22 day of November, 1974.

JON O. NEWMAN
United States District Judge

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8. The motion of defendants in *Scott* is correspondingly denied.

APPENDIX IV

UNITED STATES DISTRICT COURT

DISTRICT OF CONNECTICUT

Civil No. B-538
Civil No. N-74-75

JOSEPH M. SCOTT, SR.

v.

NONNEWAUG REGIONAL SCHOOL DISTRICT NO. 14, *et al.*,

JOHN E. BAKER, *et al.*,

v.

REGIONAL HIGH SCHOOL DISTRICT NO. 5, *et al.*

JUDGMENT

The above cases having come on for consideration by the Court on plaintiffs' Motions for Summary Judgment and the Court having rendered its Memorandum of Decision, under date of November 22, 1974, granting said motions; and the Court having rendered its Ruling on Request for Rule 54(b) Certification, under date of January 3, 1975, finding that there is no just reason for delay and specifically directing the Clerk to enter judgment on the claims for declaratory relief,

It is ORDERED and ADJUDGED that judgment be and is hereby entered declaring that the allocation of membership on the Boards of Education of Nonnewaug Regional School Dis-

trict No. 14, and of Regional High School District No. 5, deprives plaintiffs of the equal protection of the laws in violation of the Fourteenth Amendment.

Dated at New Haven, Connecticut, this 8th day of January, 1975.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1975

Docket No. 75—496

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, as Treasurer of the Town of Bethany, JAMES BERRY, as Treasurer of the Town of Woodbridge, SIDNEY SVIRSKY, as Town Clerk of the Town of Bethany, and JEAN HANNA, as Town Clerk of the Town of Woodbridge,

Petitioners,

VS.

JOHN E. BAKER and GERALDINE S. GEORGE,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

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IN THE

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Docket No. 75—496

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, as Treasurer of the Town of Bethany, JAMES BERRY, as Treasurer of the Town of Woodbridge, SIDNEY SVIRSKY, as Town Clerk of the Town of Bethany, and JEAN HANNA, as Town Clerk of the Town of Woodbridge,

Petitioners,

vs.

JOHN E. BAKER and GERALDINE S. GEORGE,

Respondents.

BRIEF IN OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Questions Presented

1. Whether the principle of one person—one vote applies to regional boards of education governing multi-town regional school districts under Connecticut law, in the elections for which every elector of each constituent town is eligible to vote.

2. Whether respondents—who are residents, taxpayers and electors of the Town of Orange and are therefore en-

titled to vote for members of the regional board of education and suffer dilution of their voting rights from malapportionment—are deprived of standing to bring the instant suit to vindicate their constitutional rights if they did not themselves originally conceive the idea to institute this suit and if their legal fees and expenses are being paid by another.

Statutes Involved

In addition to the Fourteenth Amendment to the United States Constitution, cited by petitioners, there is also involved Connecticut General Statutes §§ 10-39 through 10-63i which govern the creation and incidents of regional school districts and boards in Connecticut and §§ 7-6 and 7-7, which deal with eligibility to vote at, and the conduct of, the elections at which board members are elected. Both of these sets of statutes are reproduced in Appendix I of this brief.

Statement of the Case

In 1951 the Connecticut General Assembly adopted Public Act No. 262, An Act Concerning Regional School Districts, to govern the establishment and incidents of regional school districts. The Act was approved on July 10, 1951, and by the terms of Section 28 thereof became effective immediately. This Act, unamended, remained in effect during 1952 and during all parts of 1953 relevant to this case.

Pursuant to this statute the Towns of Bethany, Woodbridge and Orange established a temporary regional school planning committee which on October 30, 1952 reported a recommendation that, *inter alia,* a regional school district for the three towns be established to build and administer a high school for grades seven through twelve. Again acting pursuant to 1951 Public Act No. 262, the three

towns each held special elections—Woodbridge on November 4, 1952; Orange on December 20, 1952; and Bethany on January 17, 1953—and approved creation of a regional high school district.

Following the third and last of these statutorily-prescribed elections, a joint meeting of the boards of education of the three towns was held on January 29, 1953, again pursuant to the procedures prescribed in 1951 Public Act No. 262, to determine the size and apportionment of the board of education to govern the regional high school district. This meeting decided upon a nine member board, with three members to be elected from Bethany, three from Woodbridge, and three from Orange. Finally, again pursuant to the provisions of 1951 Public Act No. 262, the State Board of Education approved the establishment of what has ever since been known as Regional High School District No. 5, the first-named petitioner herein. That school district remains today governed by an elected board of nine members, elected as set forth above.

The Town of Orange, with a population of 13,524, represents 54% of the population of the three-town petitioner district. As admitted by the petitioner District, et al., in their Amended Answer, the average daily membership (ADM) of the District consisted in the 1972-73 school year of an estimated 55.18% from Orange. Pursuant to the requirements of Connecticut General Statutes § 10-51, requiring each town to pay the same percentage of the district's budget as its percentage of the district's ADM, Orange in the school year 1973-74 paid 55% of the expenses of the district.

The powers and duties of the petitioner board, as of all regional boards of education, are defined by Chapter 164, Part III of the Connecticut General Statutes, the present codification of 1951 Public Act No. 262, as amended from time to time. These statutes are set forth in Appendix I of this brief, and are discussed and analyzed *infra* in the

Argument. Respondents—both of whom are residents, taxpayers and electors of the Town of Orange—brought this suit seeking a declaratory judgment that the present apportionment plan for the petitioner board is unconstitutional, an injunction requiring the petitioner board to amend the plan so as to cure the unconstitutional defect, and additional injunctive relief as to expenditures by the petitioner district until the petitioner board is apportioned in accordance with federal constitutional principles. Judgment for the declaratory relief claimed was entered by the trial court on January 8, 1975, and affirmed by the Court of Appeals for the Second Circuit on July 23, 1975.

Thus, to summarize:

1. Respondents are residents, taxpayers and electors of the Town of Orange.

2. The Town of Orange has 54% of the population of the petitioner district.

3. The Town of Orange represents 55% of the ADM of the petitioner district.

4. The Town of Orange pays 55% of the expenses of the petitioner district.

5. The Town of Orange only elects 33⅓% of the members of the petitioner board.

ARGUMENT

I. One Person-One Vote Applies to Regional Boards of Education

In the first ground of their petition petitioners spiritedly denigrate the powers and responsibilities of the regional board, exalt the function of the district meeting beyond its statutory limits and actual experience, seek to disparage the electoral process by which board members are elected

—as they must be by state statute—and from this trinity of attacks purport to find doubt as to the applicability of one person-one vote to this board under existing decisional law of this Court. It is the position of respondents, as it has been the holding of the Court of Appeals and the District Court, that the existing law on the subject enunciated by this Court fully supports and requires application to this board of education of the electoral principle of one person-one vote; and that accordingly, petitioners have failed to meet any of the criteria established by this Court in Rule 19(b) of its Rules for determining whether to grant a petition for writ of certiorari:

> Where a court of appeals has rendered a decision in conflict with the decision of another court of appeals on the same matter; or has decided an important state or territorial question in a way in conflict with applicable state or territorial law; or has decided an important question of federal law which has not been, but should be, settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

A. The Powers of the Board

We begin with an examination of the nature and powers of regional boards of education, of which the petitioner board is one, under Connecticut law; for, contrary to the implication of petitioners' petition, it is the powers the board *has, not* those it lacks, which are of crucial importance in determining the applicability of the one person-one vote principle.

Regional school districts are authorized, their creation governed, their powers, duties and responsibilities pre-

scribed, and their incidents set forth exclusively in the Connecticut General Statutes in what is now Chapter 164, §§ 10-39 through 10-63i (See Appendix I). A regional school district is a body politic and corporate. § 10-56. It is a quasi-municipal corporation. *Regional High School District No. 3* v. *Town of Newtown,* 134 Conn. 613, 620, 59 A. 2d 527 (1948). Its powers include the power "to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools." § 10-56. The district may also issue bonds upon the full faith and credit of the district and its member towns, in the manner and for the purposes prescribed by state statute. § 10-56.

This quasi-municipal body politic and corporate is governed by a regional board of education, which by statute must be elective and which, also by statute, has "all the powers and duties conferred upon boards of education by the general statutes . . ." § 10-47. Like a town board of education, a regional board of education is an agency of the state. *Regional High School District No. 3* v. *Town of Newtown, supra,* at 617. Some of these powers are set forth in § 10-47 itself, which states as follows:

> Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the pur-

> poses of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk.

In Appendix II to this brief, we have provided a summary listing of the more significant powers of boards of education which, under § 10-47, a regional board of education would also necessarily possess.

Turning to the area of finance, the powers of the regional board are awesome, partaking of powers which in municipalities are divided among several boards. The district, acting through its regional board of education, may issue bonds after approval by referendum, just as municipal legislative bodies do. The board may authorize bond anticipation notes for periods of up to four years, pursuant to § 10-56(c), and is permitted to treat the proceeds of these bonds or notes "in the same manner and to the same extent as permitted school districts or municipalities in chapter 112." § 10-56(d). Pursuant to the provisions of § 10-60, the board may also borrow money for periods of up to five years in addition to its power to issue bonds.

What is of particular significance in this catalogue of the board's bonding powers is the centrality of the board in this process. For while—as is the case in all Connecticut towns, whether for educational or other governmental purposes—the bond ordinances themselves must be *approved* by the voters of the district in a referendum, *whether* to propose a bond ordinance, for what *purpose,*

when, for *how much,* and in what *form* are all within the sole and exclusive jurisdiction of the regional board. The voters may ratify or disapprove; but *what* they ratify or disapprove is whatever the board decides to present to them.

In its budget-making powers, the board combines within itself all of the powers which in other towns are divided among the board of education, the board of selectmen, and the board of finance (see, e.g., §§ 10-222 and 7-344). Under § 10-51 it and it alone drafts and presents to the annual district meeting the budget for the next fiscal year. In districts of four towns or more the board may decide the method of voting at the annual meeting. If the meeting rejects the budget, the board alone redrafts and re-presents the budget for another vote. And when its budget is finally approved, it is the board which fixes the assessment each member town must pay. Payment of this sum may be compelled by judicial process, § 10-51a. In addition, the board is empowered to submit a supplementary budget if necessary, § 10-50a.

Here, too, the significance of these powers must not be permitted to pass without comment, for petitioners make much in their brief of the budget-making process, and appear to be attempting thereby to deprecate the power of the Board. To the contrary, however, what clearly emerges from petitioners' own discussion and trial court affidavits is the very real power of the board. What becomes readily apparent from petitioners' own extended discussion is the total control by the board over the *content* of whatever budget the district meeting receives for its consideration. The board alone has the exclusive power to initiate and to propose. Unlike legislative bodies or town meetings, the district meeting has only one power: to vote up or down whatever budget the board chooses to present to it, without amendment. If it chooses not to ratify a budget as presented, it sends it back to the board; and it is the board and

the board alone which decides *whether* to amend the budget and *how* to amend it. The district meeting, then, has nothing more than a veto power.

Yet another power of the board ought here to be mentioned in connection with the budgetary process, for it will give some indication of the complete authority and control over its finances—and hence, over the quality and content of education available in the district—which the board of education in Connecticut has. That power—most clearly articulated in *Board of Education of Town of Ellington* v. *Town of Ellington,* 151 Conn. 1, 193 A 2d. 466 (1963)—is the power, in the sole and unfettered discretion of the board, to spend its budget for any previously-stated purpose it chooses in whatever amount it chooses, so long as it does not exceed the total amount of the approved budget. Thus, as an example, the board may present to the district meeting for ratification a budget allocating $5,000 for band uniforms and $25,000 for physics laboratory supplies; and the district meeting may ratify that budget; and yet the board may legitimately proceed to expend $29,000 for band uniforms and $1,000 for physics laboratory supplies, for under Connecticut law that is its right and its power, exclusively. It takes no fecundity of imagination to appreciate the truly awesome power over the education of children this statutory provision reposes in boards of education. It is doubtless this power which has in significant part accounted for the long resistance to any proposal to permit appointment, rather than popular election by all voters in the district, of board members.

And as far as the district meeting's authority with respect to collective bargaining agreements is concerned, here again the agreement is negotiated by the board; and the only opportunity a district meeting will have to pass upon it arises *if* the chief executive officer of a constituent town

requests that a meeting be called. (General Statutes § 10-153d).

Thus, the regional school board exercises the general management and control of all schools within its district. It employs and dismisses teachers in those schools. It makes contracts. It collects fees. It acquires property, builds and operates schools. It supervises and disciplines students. It alone drafts its own budget for consideration, unfettered by any other boards; and after the budget has been adopted, it and it alone assesses the mandatory contributions of the constituent towns and decides how that budget in fact will be spent.

B. Relevant Case Law

With this review of the nature and powers of the petitioner Board, as a regional board of education, clearly in mind, we turn to an examination of the relevant case law. We believe it is clear beyond peradventure that the applicability of the principle of one person-one vote to this board is compelled by the decision of this Court in *Hadley* v. *Junior College District of Metropolitan Kansas City,* 397 U.S. 50 (1970). There the Court held as follows (at page 56):

> We therefore hold today that as a general rule, whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election, and when members of an elected body are chosen from separate districts, each district must be established on a basis which will insure, as far as is practicable, that equal numbers of voters can vote for proportionally equal numbers of officials.

The Court also expressly rejected any artificial distinction between elections for "legislative" officials and those for

"administrative" officers. It stated (again at page 56):

> Education has traditionally been a vital governmental function, and these trustees, whose election the State has opened to all qualified voters, are governmental officials in every relevant sense of that term.

A review of the powers and duties of a regional board of education discloses its decisive impact on the people of the district, and clearly brings it within the intendment of this Court in *Hadley* that the board members

> perform important governmental functions within the districts and . . . these powers are general enough and have sufficient impact throughout the district to justify the conclusion that [one man-one vote] should be applied here.

Id., at 53-54.

While *Hadley* has served as the touchstone for all post-1970 decisions on application of one person-one vote to boards of education, the clear trend of the courts had been in that direction well before *Hadley*. In such cases as *Delozier* v. *Tyrone Area School Board*, 247 F. Supp. 30 (W.D. Pa.; 1965); *Strickland* v. *Burns*, 256 F. Supp. 824 (M.D. Tenn.; 1966); *Meyer* v. *Campbell*, 152 N.W. 2d 617 (Iowa; 1967); followed in 1971 in *Stanley* v. *Southwestern Community College Merged Area*, 184 N.W. 2d 29; *Oliver* v. *Board of Education of the City of New York*, 306 F. Supp. 1286 (S.D.N.Y.; 1969); and *Freeman* v. *Dies*, 307 F. Supp. 1028 (N.D. Tex.; 1969), both federal and state courts found the principle applicable both to city and to county-wide boards of education.

After *Hadley* was decided on February 25, 1970, the lower courts kept rapid pace. The one person-one vote principle was found constitutionally required for the elective school boards in *Fahey* v. *Laxalt*, 313 F. Supp. 417 (D. Nev.; 1970); *Adams* v. *School Board of Wyoming Val-*

ley West School District, 332 F. Supp. 982 (M.D. Pa.; 1970); *Mayes* v. *Teague,* 341 F. Supp. 254 (E.D. Tenn. N.D.; 1972); *Chargoris* v. *Vermilion Parish School Board,* 348 F. Supp. 498 (W.D. La.; 1972); and *Panior* v. *Iberville Parish School Board,* 498 F. 2d 1232 (CA-5; 1974).

Nothing in the most recent Supreme Court apportionment decisions, *Salyer Land Co.* v. *Tulare Water District,* 410 U.S. 719 (1973), and *Associated Enterprises, Inc.* v. *Toltec Watershed Improvement District,* 410 U.S. 743 (1973), in any way diminishes the force of those decisions or erodes the applicability of *Hadley* to school boards such as those involved here; indeed the Court in *Salyer* expressly mentioned *Hadley,* and distinguished the "special limited purpose" district having a "disproportionate effect of its activities on landowners as a group" from the ambit of *Hadley's* holding. *Id.* And petitioners can find no comfort in *Gaffney* v. *Cummings,* 412 U.S. 735 (1973), or *Mahan* v. *Howell,* 410 U.S. 315 (1973), either; for both of those cases were based upon the acknowledged applicability of one person-one vote, and dealt only with permissible ranges of population deviation under that principle.

Indeed, it may be that the arguments of *Hadley* have even greater force in the case at bar than they did for Missouri's junior college districts. For as the Court stated in *Dameron* v. *Tangipahoa Parish Police Jury,* 315 F. Supp. 137, 138 (E.D. La.; 1970), in applying one person-one vote to the parish school board:

> The only differences between the present case and the one presented in *Hadley* make this an even stronger case for reapportionment. The immediate importance to the individual voter of having equal representation on the board that runs the basic public school system of the Parish is much more obvious than his concern with the governance of the local junior college. The elected local school board traditionally exercises governmental authority over matters of utmost significance

> to all the people within its jurisdiction. It does not represent an experimental means of handling newly instituted state administrative matters, as the dissent in *Hadley* characterized the Missouri junior college districts.

The Second Circuit Court of Appeals itself had previously recognized that boards of education, both district and county, must if elective be apportioned on the basis of one person-one vote. *Rosenthal* v. *Board of Education of Central High School District No. 3,* 497 F. 2d 726, 729 (CA-2; 1974). And while the Connecticut courts have not specifically passed upon the one person-one vote question as it applies to school boards, our federal court, affirmed by this Court, has at least tangentially held that principle applicable in its opinion in *LoFrisco* v. *Schaffer,* 341 F. Supp. 743, 747 (D. Conn.; 1972), affirmed, 409 U.S. 972 (1972). That case, dealing with the minority representation statute in the context of the Wilton board of education election, did not present for decision the one person-one vote issue. However, the court freely discussed *Hadley* at page 747, and concluded

> The Fourteenth Amendment one man-one vote principle clearly applies here.

All of these cases point the way clearly and unmistakably to a finding that one person-one vote applies to regional school boards in Connecticut and, more especially, to the petitioner Board. Of even greater import, however, is the fact that in two recent New England federal cases dealing with regional school boards strikingly similar to the petitioner Board and the other Connecticut regional school boards, the courts have held precisely that.

Leopold v. *Young,* 340 F. Supp. 1014 (D. Vt.; 1972) involved apportionment of the school board of a four-town voluntarily-established high school district with population disparities ranging from 16.9% to 35.5%, but with

each town having three members on the twelve-member elected school board. Like the situation in the case at bar, formation of the district under Vermont law required the approval of the voters of each constituent town. Like the situation in Connecticut, the apportionment of school board members had to be agreed upon by the constituent towns.[1] The court held in *Leopold* that one person-one vote applies to the election of the regional high school board, a decision that it felt flowed ineluctably from this Court's decision in *Hadley, supra.* And it was of no moment to the court in *Leopold*—as it was of no moment to this Court—that the district was established voluntarily by the towns. For as this Court held in *Lucas* v. *Forty-fourth General Assembly of Colorado,* 377 U.S. 713, 736-737 (1964):

> An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of a majority of a State's electorate, if the apportionment scheme adopted by the voters fails to measure up to the requirements of the Equal Protection Clause. Manifestly, the fact that an apportionment plan is adopted in a popular referendum is insufficient to sustain its constitutionality or to induce a court of equity to refuse to act. As stated by this Court in West Virginia State Bd. of Educ. v. Barnette, 319 U.S. 624, 638 [63 S. Ct. 1178, 1185, 87 L.Ed. 1628], "One's right to life, liberty, property . . . and other fundamental rights may not be submitted to vote; they depend on the outcome of no elections." A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose that it be.

---

[1] Under the 1951 statutes the apportionment in Connecticut was determined by majority vote of a joint meeting of the constituent towns' school boards after the district had been established. 1951 Public Act No. 262, § 9. Under existing Connecticut law, board apportionment is one of the matters comprising the report of the temporary regional school study committee, and is voted upon by the proposed constituent towns as part of the referendum item as to establishment of the district. General Statutes § 10-43.

> We hold that the fact that a challenged legislative apportionment plan was approved by the electorate is without federal constitutional significance, if the scheme adopted fails to satisfy the basic requirements of the Equal Protection Clause . . .

In reaching its decision, the Court in *Leopold* reasoned persuasively as follows:

> Since school boards of union school districts perform governmental functions and since those Shelburne and Williston residents who desire full representation on the District school board cannot be deprived of their right to an equal voice in the operation of the District, there can be no constitutionally permissible justification for the malapportionment of the Champlain Valley Union High School District. It may be true that equal representation of the four towns constituting the District induced the smaller towns to participate in the District in the first instance, and may serve some useful purposes. Nevertheless, the Supreme Court cases require that legitimate town interests be safeguarded in some way other than impingement on constitutionally protected rights by way of gross malapportionment. Moreover, these legitimate interests may to some extent be reflected when the "one man-one vote" principle is applied in particular cases, since the Supreme Court has only recently taken the view "that the particular circumstances and need of a local community as a whole may sometimes justify departures from strict equality." Abate v. Mundt, 403 U.S. 182, 185, 91 S. Ct. 1904, 1907, 29 L.Ed. 2d 399 (1971). Here, however, there should be little problem since the proportions involved bear such a clear ratio to one another.

A similar situation prevailed in *Powers* v. *Maine School Administrative District No. 1,* 359 F. Supp. 30 (D. Me.

N.D.; 1973). This case involved apportionment of the school board of a five-town voluntarily-established school district. In *Powers* the total population of the district was 14,414; the population of the largest constituent town was 11,452; the school board consisted of 17 members; and the largest town was entitled to only 9 members. Here again, Maine law required the approval of the voters of each constituent town for establishment of the district, including the apportionment on the regional board (in Maine, called the "board of directors"). The Court, again citing *Lucas,* rejected the contention that the voluntary creation of the district exempted its apportionment from the requirements of one person-one vote, and held that one person-one vote applied.

C. The Board Is Popularly Elected

Petitioners then attempt to persuade this Court that the board is not elective in the sense this Court intended for application of the one person-one vote principle, because there is no requirement that the election involved be surrounded by the familiar panoply of "primaries, absentee ballots, polls open for a period of time, voting machines or paper ballots, and formal procedures for canvassing election results" (Petition, page 13). While—in the face of General Statutes § 10-46, requiring regional boards to be elective—they cannot and do not claim these boards are not elective, they claim that because their members are chosen at town meeting elections rather than general elections such as usually fall on the first Tuesday after the first Monday in November, they are not chosen at "popular elections" which, they claim, are the only sorts of elections to which this Court intended the one person-one vote principle to apply.

In this regard, this Court has spoken clearly:

> This Court has consistently held in a long series of cases, that in situations involving elections, the States are required to insure that each person's vote counts as

much, insofar as it is practicable, as any other person's. We have applied this principle in congressional elections, state legislative elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constitution against dilution or debasement. While the particular offices involved in these cases have varied, in each case a constant factor is the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions. Thus in the case now before us, while the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in the one crucial factor—these officials are elected by popular vote.

When a court is asked to decide whether a State is required by the Constitution to give each qualified voter the same power in an election open to all, there is no discernible, valid reason why constitutional distinctions should be drawn on the basis of the purpose of the election. If one person's vote is given less weight through unequal apportionment, his right to equal voting participation is impaired just as much when he votes for a school board member as when he votes for a state legislator. While there are differences in the powers of different officials, the crucial consideration is the right of each qualified voter to participate on an equal footing in the election process. It should be remembered that in cases like this one we are asked by voters to insure that they are given equal treatment, and from their perspective the harm from unequal treatment is the same in any election, regardless of the officials selected.

Hadley, at 54-55

What is a "town meeting" under Connecticut law, that petitioners should seek to withdraw from it the application of one person-one vote apportionment principles? Judge

Swift, writing in 1795, some 23 years before adoption of Connecticut's first Constitution of 1818 and cited by petitioners in their petition as authority on the subject, called it, "an epitome of a pure, unmixed, democracy". (Petition, at 12, n. 8). How incongruous must it be, then, that petitioners seek to penalize the exercise of this act of pure democracy—election of public school officials—by withholding from its participants the protection of "one person-one vote" apportionment. Petitioners seek to distinguish between "pure democracy" situations such as elections at town meetings, where they say the principle does not apply, and "the institution of representative government" to which they claim it does (Petition, page 13). What they confuse or ignore—it is not clear which—is that the principle of one person-one vote is applied to the apportionment of *bodies* of representatives *chosen* at democratic elections. The *occasion* for application of the principle is the *election;* the representative *body* is the *entity* to be *apportioned.* (Indeed, petitioners miscite *Reynolds* v. *Sims,* 377 U.S. 533, 562, as stating that it is "the *institution* of representative government, not pure democracy, that is the bedrock from which the one person-one vote principle springs." Petition, p. 13. What *Reynolds* said was that "the right to *elect* legislators in a free and unimpaired fashion is a bedrock of our political system." (emphasis supplied).)

In point of fact, under General Statutes § 7-6 (see Appendix I) both regular and special town elections in Connecticut are also "town meetings" under the statutes; and that very § 7-6 is itself part of Chapter 90 of the General Statutes, which forms the basis of one of the two alternative methods of electing board members under § 10-46(b). It is therefore anomalous that, while petitioners presumably would not deny the applicability of one person-one vote to boards chosen at regular or special town elections that were by statute also "town meetings", they would deny that protection for boards chosen at "town meetings"

which did not happen also to be regular or special town elections.

Finally, cutting to the heart of the matter, the simple fact of the matter is that under § 7-6 in the elections held in Orange, in Bethany, and in Woodbridge for regional board of education members "any person who is an elector" of the town is eligible to vote, just as he or she is for President, Governor, Congress, the General Assembly, or local selectmen. And, as petitioners point out in their Petition (page 13, n. 10) § 7-7 provides that when petitioned for by 200 persons 24 hours before the meeting, voting machines or paper ballots may be used at the regional board election and the polls may be open from 6 a.m. to 8 p.m. in each town, just as they are for elections of the President, Governor, Congress, the General Assembly, or local selectmen. (And if no such petition is filed, the vote at the Town meeting is conducted by paper ballot under §-7-6, if the meeting so decides.) Thus, to the extent the voters want it, petitioners are assured their trappings of "polls open for a period of time, voting machines or paper ballots, and formal procedures for canvassing election results."

Petitioners can point to no case law, no statute, and no logic to support their theory that the Constitution limits application of one person-one vote to bodies elected only in elections with certain automatic statutorily-created trappings such as primaries and absentee ballots. If an election such as is provided in § 7-6—where every elector in the town is eligible to participate individually in the voting, and by voting machine or paper ballot in a 14-hour election if desired—is not the sort of election to which this Court was referring in *Hadley,* its predecessors and its progeny, then, we submit, it would be next to impossible to conceive of such an election. The petitioner board is elected at a "popular election"—an election in which all electors may participate individually—and the board must therefore be apportioned on the basis of one person-one vote.

II. There Is Necessary Standing, Justiciability, and Jurisdiction

At length, petitioners fall back upon a theory that unless respondents (plaintiffs below) can demonstrate that the original idea of instituting this suit was theirs alone and that they alone are bearing all of the costs of legal fees and disbursements incident to its prosecution, respondents are not proper parties, although it is undisputed that they both are residents, electors and taxpayers of the Town of Orange and it is *their* voting rights that are being affected and diluted by the existing malapportionment of the board. Petitioners claim this question has never been decided by this Court. But it has been; and that decision has been consistently followed by the lower courts ever since.

In *Wheeler* v. *City and County of Denver,* 229 U.S. 342 (1913), this Court expressly held that the mere fact that a plaintiff was solicited to bring the suit in question—which it had a right to bring—and was indemnified against liability for costs and fees was not enough in itself in the absence of any illegal purpose to make the case collusive so as to deprive the court of jurisdiction. That holding has recently been followed again in the Second Circuit where the District Court, whose opinion the Court of Appeals adopted in affirming, stated:

> To support a charge that the plaintiff has been improperly or collusively made a party to a diversity action, the defendant may be able to show that there are others, lacking the citizenship necessary to jurisdiction, who have an equal or greater interest than the plaintiff in the outcome of the suit brought in his name. It may further appear that such persons sought out the plaintiff to urge him to bring suit in federal court and agreed to indemnify him against all costs

and expenses of that litigation. Where the plaintiff himself held an interest in the subject matter of the proposed litigation prior to such solicitation and agreement, and hence would have been entitled at that time to bring his own suit, it has been held that these circumstances, without more, are insufficient to make out collusion. *Wheeler* v. *City & County of Denver,* 229 U.S. 342, 33 S. Ct. 842, 57 L.Ed. 1219 (1913); *Allstate Ins. Co.* v. *Lumbermens Mut. Cas. Co.,* 204 F. Supp. 83 (D. Conn. 1962); *First Congregational Church and Soc. of Burlington, Iowa* v. *Evangelical and Reformed Church,* 160 F. Supp. 651 (S.D.N.Y. 1958).

Ferrara v. *Philadelphia Laboratories, Inc.,* 272 F. Supp. 1000, 1012-1013 (D. Vt.; 1967), affirmed by the Court *per curiam* for reasons stated in the trial court's opinion 393 F. 2d 934 (CA-2; 1968).

Petitioners, to their credit, do not attempt to mask their real purpose in raising this novel argument as to parties. They note (Petition pages 13-14) that the Town of Orange itself could not institute the suit at bar, since it is not an elector being deprived of a constitutional right. They also seriously question whether the Town could institute such a suit in a representative capacity. The obvious purpose of their argument is to prevent *any* resident and elector of the Town from bringing this suit and changing the apportionment of the board *unless* he or she can afford the legal fees and printing costs for briefs and other legal expenses incident to such a suit *and,* it would appear, *unless* the very idea of bringing such a suit sprang solely from respondent's own mind, and was not suggested, inspired, or solicited by anyone else. Petitioners would thus limit standing to the wealthy and legally sophisticated.

If petitioners' theory of law be true—that encouragement of and paying the legal expenses for and assisting

in the prosecution of a suit makes an entity the "real party in interest" and the named individual plaintiffs merely collusively-made agents, nominees or pawns—then, presumably, petitioners will have effectively sounded the death knell for such pioneering organizations as the NAACP Legal Defense Fund, the ACLU, the Lawyers' Committee on Human Rights, Sierra Club, Common Cause—not to mention the two major political parties in reapportionment suits—which, by providing legal and financial assistance and by encouraging individuals to seek judicial redress for infringements of their constitutional rights, have brought about some of the landmark decisions in constitutional law in this country. One had thought such an argument had long since been laid to rest. See *NAACP* v. *Button*, 371 U.S. 415 (1963).

There can be no doubt in the case at bar that respondents Baker and George held their constitutional rights to one person-one vote before any contact from the Town of Orange, and that they would have been entitled to bring this suit without any contact with the Town.

Finally, to allay petitioners' last lingering doubts as to the sincerity of respondents' interest in vindication of their constitutional rights, it might be noted that both respondents on deposition testified that they wrote counsel requesting and authorizing this suit to be brought in their names and that both respondents, despite petitioners' solicitous probing as to their true desires and intent, affirmed on deposition their long-standing and continuing support of one person-one vote as the principle for election of their regional school board, and have steadfastly remained in the case as the plaintiffs despite petitioners' implied invitation that they withdraw.

Thus, there can be no doubt that Mr. Baker and Mrs. George are the real parties in interest, and that they are properly before this Court.

Conclusion

In light of the clear lessons of American history during the last two decades, it is difficult to believe that anyone in 1975 seriously contends that boards of education do not perform sufficiently "important governmental functions" so as to be subject to apportionment on the basis of one person-one vote. The powers the petitioner regional board of education has—as shown by the Connecticut statutes in Appendices I and II and case law—and the fact that the board is elected at elections in which every elector of each town may participate clearly require that that principle be applied in apportioning membership on the petitioner board, and that these respondents—as residents, taxpayers and electors of the Town of Orange—properly brought the instant suit.

As petitioners themselves note, the Connecticut legislature has enacted a statute providing for the application of one person-one vote principles to the election of regional boards of education. This it has done as a result of the judgment in the instant suit. All that delays its immediate implementation is a final determination of the case at bar in favor of respondents.

The petition for writ of certiorari should be denied.[1]

Respectfully submitted,

RALPH G. ELLIOT
Counsel for Respondents

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[1] Decided with the instant case both in the District Court and in the Court of Appeals was *Scott* v. *Nonnewaug Regional School District No. 14*, which seeks reapportionment of the regional board of education of District No. 14, comprising the towns of Woodbury and Bethlehem, Connecticut. The *Scott* defendants are also planning to petition for a writ of certiorari.

Counsel for respondents in *Baker* served as counsel in both courts below for the Town of New Hartford as *amicus curiae* in *Scott*, urging reapportionment. While it is not clear whether the Town of New Hartford will be filing any objection in *Scott* similar to the instant brief, it is submitted that the same objections as hereinabove set forth apply with equal force in *Scott*, and that the companion petition should be denied as well.

(58858)

APPENDIX I

PART III*

REGIONAL SCHOOLS

Sec. 10-39. Temporary regional school study committee. (a) Two or more towns may establish a regional school district in accordance with the provisions of this part and the regulations promulgated thereunder. The state board of education shall promulgate regulations setting standards to govern the formation of regional school districts with respect to the minimum and maximum enrolment, the geographical limitations and other such factors which bear on the achievement of more efficient administration of a school district and efficacious education of the pupils therein. (b) Two or more town or regional school districts may, by vote of their legislative bodies, join in the establishment of a temporary regional school study committee, hereafter referred to as the committee, to study the advisability of establishing a regional school district, and report to the respective towns in accordance with section 10-43. In performing its duties, such committee may employ an architect to assist in estimating the cost of providing school facilities, an appraiser to establish the value of assets of each participating school district and such other professional consultants or personnel as may be needed, provided the committee shall not incur obligations which exceed the monies received pursuant to section 10-42. The committee shall continue until dissolved pursuant to section 10-43 but no longer than two years from the date of its organization unless the legislative bodies

*Plaintiff merely taxpayer and voter in area affected has no standing to bring action for declaratory judgment concerning validity of establishment of regional school districts under this chapter. 137 C. I.

of the participating towns vote to extend the life of the committee for a period not to exceed two years. (c) Two or more boards of education may conduct a preliminary study of the advisability of establishing a regional school district, and if their findings are affirmative, such boards of education, except as provided below, shall submit a written report to the chief executive officer in each town served by such boards. Within thirty days of the receipt of the report, such officer shall call a meeting of the legislative body of the town which shall consider the report and vote on the question of establishing a temporary regional school study committee pursuant to subsection (b) of this section. In the case of a regional board of education, such board shall call a meeting of the regional school district for such purposes. (d) A regional school district may participate as a region in any study undertaken pursuant to subsection (b) or (c) of this section, provided such study is for the purpose of establishing a regional school district which may provide for the proposed district all programs under the general supervision and control of the state board of education. In the case of a preliminary study, the regional board of education shall submit the written report to a regional school district meeting called to consider the report and vote on the question of joining in the establishment of a temporary regional school study committee pursuant to subsection (b) of this section. A regional school district may vote to appoint five members to a temporary regional school study committee at a regional school district meeting. Two of such members shall be members of the regional board of education. The towns which are members of such regional school district shall be "participating" towns for the purposes of notice, reports and referenda under sections 10-41 to 10-43, inclusive, and section 10-45. If a new regional school district is established by the referenda, the board of education of the regional school district which participated in the study shall be deemed a town board of education for purposes of section 10-46a. (e) Any temporary regional school study committee established before June 24, 1969, shall continue its study in accordance with the procedures and mandates of this part, but shall not be required to change its membership. The provisions of section 10-42 shall apply.

(1951, 1953, 1955, S. 895d; 1969, P.A. 698, S. 1.)
Cited. 157 C. 7.

Sec. 10-40. Appointment of committee members. The legislative body of each town joining in the establishment of such a committee shall appoint to such committee five members at least two of whom shall be members of the board of education of such town. The town clerk of each town shall immediately give notice of the appointments made to the state board of education. Within thirty days of receipt of the last of such notices, the state board of education shall appoint a consultant to such committee. The consultant shall call the first meeting of the study committee within ten days after his appointment.

(1951, 1953, 1955, S. 895d; 1963, P.A. 387, S. 1; February, 1965, P.A. 411, S. 1; 1969, P.A. 698, S. 2.)
Cited. 141 C. 401.

Sec. 10-41. Officers and records of committee. The committee, at its first meeting, shall elect from among its number a chairman, a secretary, a treasurer who shall be bonded, and such other officers as the committee determines to be necessary. Meetings of the committee shall be held at the call of the chairman or at such times as the committee determines. A majority of the committee shall constitute a quorum. The treasurer shall receive all funds and monies of the committee, pay out the same upon the order of the committee within the

limits of such receipts and keep detailed accounts thereof. The secretary of the committee shall keep minutes of the meetings and file copies thereof with the town clerk of each participating town.

(1951, 1953, 1955, S. 8961; 1969, P.A. 698, S. 3.)

Sec. 10-42. Expenses of committee. The committee may receive and disburse for the purposes of the study monies from any source, including bequests, gifts or contributions, made by any individual, corporation or association. Each participating town shall pay a share of the expenses of the committee in an amount which is in the same proportion to the total expenses as the number of pupils used to compute the grant to such town pursuant to section 10-262 for the school year next prior to that in which the committee is established bears to the total number of such pupils in participating towns. The expenses of the committee in the initial two-year period shall not exceed five dollars times the total number of pupils used in the above computation. An affirmative vote by the legislative body to join a temporary regional school study committee shall obligate the town or regional school district to pay its share of the expenses of the committee. The treasurer of the district shall pay to the committee upon demand of its treasurer any portion of such share. Subject to the approval of the state board of education, for the purpose of computing any state grant for school building purposes under chapter 173, any part of such monies paid to an architect for professional services shall be applied to the total cost of any school building which may be constructed. An affirmative vote by the legislative body to extend the life of the committee pursuant to section 10-39 shall obligate the town or regional school district to pay its share of the additional expenses. The total expenses of the committee for each additional year shall not exceed one-half the limit set for the initial two-year period. Any unencumbered balance remaining in the treasury of the committee at the time such committee is dissolved shall be returned by the treasurer to the participating districts in the same proportion as their respective shares were paid to finance the expenses of the committee

(1951, 1955, S. 8974; 1969, P.A. 698, S. 4.)

Sec. 10-43. Reports to towns. Dissolution of committee. (a) The committee shall at least semiannually, make progress reports to the participating towns and the state board of education in such manner as the committee deems suitable. Upon completion of its study, the committee shall present a written report of its findings and recommendations to the state board of education and the town clerk of each participating town. If the committee finds that establishment of the proposed regional school district is inadvisable, its report shall include such findings and an explanation of the reasons for its conclusions. If the findings of the committee support the feasibility and desirability of establishing a regional school district, its report shall contain the findings of the committee with respect to the advisability of establishing a regional school district, the towns to be included, the grade levels for which educational programs are to be provided, the facilities recommended, estimates of the cost of land and facilities, a recommendation concerning the capital contribution of each participating town based on appraisals of existing land and facilities owned and used by each town for public elementary and secondary education which the committee recommends be acquired for use by the proposed regional school district, together with a plan for the transfer of such land and facilities, a recommendation concerning the size of the board of education to serve the proposed regional school

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district and the representation of each town thereon, and such other matters as the committee deems pertinent. The capital contribution of each participating town shall be in the same proportion to the total purchase price of the property transferred as the number of pupils used to compute the grant to such town pursuant to section 10-262 for the school year preceding that in which the plan is approved by the state board of education bears to the total number of such pupils in the participating towns. (b) If the committee finds: (1) Establishment of the proposed regional school district is inadvisable, the state board of education shall, within thirty days of receipt of such report, send to the committee and the town clerk of each participating town a statement of its agreement or disagreement with the committee report and the reasons therefor. The town clerk shall make available copies of the report and the statement and publish notice thereof in a newspaper having general circulation in the town. Within thirty days after receipt of the statement of the state board of education, the committee shall present the report and statement to the legislative body of each participating town at a public meeting called for the purpose of acting thereon. The committee is dissolved upon presentation of its report to all participating towns; (2) establishment of a regional school district is advisable, the state board of education shall, within thirty days of the receipt of such report, determine whether the proposed plan meets the regulations under section 10-39 in effect on the date the report was received and shall, accordingly, accept or reject the recommendations of the committee. (i) If the recommendations are rejected, the state board of education shall advise the committee in writing of the reason for rejection. The committee may revise its recommendations and resubmit its report within thirty days of receipt of notice of the rejection and shall, in such case, file a copy of the amended report with the town clerk of each participating town. If the committee does not submit an amended plan or if the committee submits an amended plan which is rejected by the state board of education, the proposed regional school district shall not be established and the procedure in subdivision (1) of this subsection shall apply. (ii) If the committee report is accepted, the state board of education shall certify to the town clerk in each of the participating towns that the committee recommendations have been approved and send a copy of such certification to the committee. The town clerk shall make available copies of the certified report and publish notice of the certification and availability of copies in a newspaper having general circulation in the town. Within thirty days after receipt of its copy of the certification, the committee shall hold a public meeting in each participating town to present the certified report. All participating towns shall hold a referendum on the same day in accordance with section 10-45. Upon completion of such referenda as may be held thereunder, the committee is dissolved.

(1951, 1955, S. 894d; 1963, P.A. 387, S. 2; February, 1965, P.A. 411, S. 2; 1969, P.A. 698, S. 5.)

Sec. 10-44. Disposition of committee records. Upon the dissolution of the committee after a referendum establishing a regional school district, the persons who served as secretary and treasurer of the committee shall transfer the original official records of the committee to the secretary of the regional board of education. Upon dissolution of the committee without the establishment of a regional school district, such persons shall transfer such records to the state board of education.

(1951, 1953, 1955, S. 894d; 1969, P.A. 698, S. 6.)

Sec. 10-45. Referendum on establishment of regional districts. (a) Upon

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receipt of a copy of the certificate of approval, the committee shall set the day on which referenda shall be held simultaneously in each of the participating towns to determine whether a regional school district shall be established as recommended. Such referenda shall be held between forty-five and ninety days from the date of such approval. The committee shall immediately notify the town clerk in each participating town of its decision. Upon receipt of such notice, the town clerk shall file the notice required by section 9-369a. The warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town, except that absentee voting shall not be permitted in other than a special or regular election. The town clerk of each participating town shall certify the results of the referendum to the state board of education. (b) The vote on the question shall be taken by voting machine and the designation of the question on the voting machine ballot label shall be "For establishing a regional school district in accordance with the plan approved by the state board of education on ....(date). YES ...." and "For establishing a regional school district in accordance with the plan approved by the state board of education on ....(date). NO ...." and the label used shall conform with the provisions of section 9-250. If the majority of the votes in each of the participating towns is affirmative, a regional school district composed of such towns is established and shall be numbered in accordance with the order of the incorporation of the districts. (c) If the majority vote of one or more of such towns is negative, the committee shall determine the advisability of immediately submitting the question to referendum a second time. If the committee so recommends, it shall notify the town clerk in each participating town of its decision. Within thirty days after receipt of such notice, the legislative body of the town shall meet to act upon the committee recommendation. If the legislative body in each of the participating towns accepts the recommendation, a second referendum shall be held in each participating towns in accordance with the provisions of this section. If the majority of votes cast in each town is affirmative, the regional school district is established and numbered accordingly.

(1949 Rev., S. 1373; 1951, 1953, 1955, S. 9004; 1953, S. 919d; 1963, P.A. 387, S. 3; February, 1965, P.A. 411, S. 3; 1969, P.A. 698, S. 7.)

District held at least sde facto. Any irregularities were validated by special act of legislature and no town has power to withdraw legislative authority. 134 C. 613. Cited. 157 C. 7.
Cited. 20 CS 158.

Sec. 10-46. Regional board of education. (a) The affairs of the regional school district shall be administered by a regional board of education, which shall consist of not fewer than five nor more than nine members. Each member town shall elect at least one member. The committee report shall determine the number of members of such regional board and the representation of each town. The first members of such regional board of education shall be nominated and elected at a meeting of the legislative body of each town held within thirty days after the referendum creating the district. The regional board of education at its first meeting, called by the secretary of the state board of education within ten days from the time the last member town to appoint members to the regional board has done so, shall organize and the members shall serve until their successors are elected and qualify. At such meeting, the board shall determine the term of office of each member according to the following principles: (1) The term of office of each successor shall be four years; (2) to establish a continuity of membership, a system of rotation shall be used; if the board has an even number of members, one-half of such number shall be elected every two years

and if the board has an uneven number of members, no more than a bare majority or a bare minority shall be elected every two years, except when the unexpired portion of the term of a vacated office must be filled; (3) the same system of rotation shall be used for election of the representatives of each member town, if possible; (4) if necessary, it shall be determined by lot which of the initial members shall serve the short terms; (5) at the first election of members in accordance with subsection (b) or (c) of this section, no more than half the offices held by initial board members shall be filled; (6) the offices held by the remaining initial board members shall be filled at the second election held in accordance with subsection (b) or (c) of this section. Thereafter, members of the board shall be nominated and elected in their respective towns in accordance with subsection (b) or (c) of this section as determined by the legislative body of each town.

(b) At least thirty days before the expiration of the term of office of any board member, a town meeting shall be held in accordance with chapter 90 to nominate and elect a successor. Any person who is an elector of such town may vote at such meeting. If a vacancy occurs in the office of any member of the regional board of education, the town affected, at a town meeting called within thirty days from the beginning of such vacancy, shall nominate and elect a successor to serve for the unexpired portion of the term in accordance with the above procedure.

(c) Board members shall be nominated and elected in the same manner as town officers in accordance with the provisions of title 9 except that (1) section 9-167a and parts II and III of chapter 146 shall not apply and (2) the board members so elected shall take office the first day of the month following the elections. If a vacancy occurs in the office of any member of the regional board of education, the legislative body of the town affected shall elect a successor to serve until the next general election, at which time a successor shall be elected to serve any unexpired portion of such term.

(d) All members of a regional board of education shall take office on the first day of the month following their election. Such board shall hold an organizational meeting in the month following the last election of members thereof held in the member towns in any calendar year at which time the board shall elect by ballot from its membership a chairman, a secretary, a treasurer and any other officer deemed necessary and may annually thereafter elect such officers. In the case of a tie vote in the balloting for any officer, such tie shall be broken by lot. The treasurer shall give bond to the regional board of education in an amount determined by the members thereof. The cost of such bond shall be borne by the district.

(1949 Rev., S. 1376; 1951, 1953, 1955, S. 9016, February, 1965, P.A. 470; 1967, P.A. 333, S. 1; 1969, P.A. 698, S. 8; 1971, P.A. 679, S. 1.)

Cited. 154 C. 619; 161 C. 401.

Sec. 10-46a. Transfer of responsibility to regional board. The regional board of education shall, after consultation with the town boards of education in the towns comprising the regional school district, determine the time and method by which the responsibility of conducting the educational program shall be transferred to the regional board of education, provided such transfer shall be completed within two years of the date of the organizational meeting of the regional board of education. When, in accordance with this section or section 10-47b,

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a regional board of education assumes the responsibility for administration of all programs which are provided in the member towns and are under the general supervision and control of the state board of education, the town boards of education are dissolved.

(1969, P.A. 698, S. 9.)

Sec. 10-47. Powers of regional board. Meetings. Regional boards of education shall have all the powers and duties conferred upon boards of education by the general statutes not inconsistent with the provisions of this part. Such boards may purchase, lease or rent property for school purposes and, as part of the purchase price may assume and agree to pay any bonds or other capital indebtedness issued by a town for any land and buildings so purchased; shall perform all acts required to implement the plan of the committee for the transfer of property from the participating towns to the regional school district and may build, add to or equip schools for the benefit of the towns comprising the district. Such boards may receive gifts of real and personal property for the purposes of the regional school districts. The regional school district annual meeting shall be the district meeting at which the annual budget is first presented for adoption and shall be held the first Monday or the first Tuesday in May. The boards may convene special district meetings when they deem it necessary. District meetings shall be warned and conducted in the same manner as are town meetings. For such purposes, the chairman of the board shall have the duties of the board of selectmen and the secretary shall have the duties of the town clerk.

(1949 Rev., S. 1377; 1951, 1953, 1955, S. 902d; November, 1955, S. N117; 1963, P.A. 444, S. 1; 1967, P.A. 113, S. 1; 1969, P.A. 698, S. 10; P.A. 73-539.)

See Sec. 10-241a.

Sec. 10-47a. Withdrawal of grades. Section 10-47a is repealed.

(1963, P.A. 444, S. 2; 1969, P.A. 698, S. 27.)

Sec. 10-47b. Addition or withdrawal of grades. (a) Except as provided in subsection (b) of this section, any regional board of education in a school district which does not include all elementary and secondary school grades may recommend a study of the advisability of the addition to or withdrawal of grades from the regional school district or, upon the request of two or more of the town boards of education of the member towns, shall recommend such a study to the chairmen of the town boards of education and chairmen of the boards of finance or other such fiscal authorities in each town affected. Within thirty days of receipt of such recommendation, such chairmen shall each appoint one of the members of their boards and the chairman of the regional board of education shall appoint one member of the regional board from each member town to a study committee. The secretary of the state board of education shall appoint a consultant to the study committee. The study committee shall proceed in the same manner as the temporary regional school study committee except that the expenses of the committee shall be borne by the regional school district and shall not exceed three dollars times the number of pupils used to compute the grants made to such town and regional school districts pursuant to section 10-262 and the committee shall submit its report to the participating towns no later than one year from the date of its organizational meeting. If the committee recommends a plan for addition to or withdrawal of grades from the regional school district and the referenda held in the manner provided in section 10-45

result in an affirmative vote in the regional school district as a whole, the participating towns shall implement the plan.

(b) The procedures in subsection (a) of section 10-47b shall not be used to dissolve a regional school district, but may be used to empower the regional school district to administer all programs which are provided in the member towns and are under the general supervision and control of the state board of education. In such case, if the vote in each member town affirms the expansion, the town boards of education in such member towns shall be dissolved in accordance with section 10-46a. If the vote is not affirmative in all the member towns, but is affirmative in a majority of such towns, the towns voting in favor of such expansion may initiate a study of the feasibility of establishing a regional school district to administer all programs which are provided in such towns and are under the general supervision and control of the state board of education. Such study shall be initiated and conducted pursuant to sections 10-39 through 10-45. In such case, the study may be made forthwith without using the procedures for withdrawal of a town or dissolution of a regional school district provided in sections 10-63a through 10-63c. If a second regional school district is so established by referenda, the first regional school district shall be dissolved. The state board of education shall make the relevant determinations required by section 10-63c for such dissolution of an existing regional school district. The assets apportioned to the member towns of the new regional school district may be transferred directly to said district. If secondary schools are among the assets so transferred to the new regional district, said district shall accept applications from the remaining school districts for admission of secondary students for a tuition based on per pupil cost for a period of at least three years after the dissolution. The state board of education may withhold from the next grant paid pursuant to section 10-262 to the town or regional school districts so established an amount equal to the proportionate share to be borne by each such district of the cost of the services rendered by said state board during the dissolution of the regional school district.

(1969, P.A. 698, S. 11; 1971, P.A. 679, S. 2.)

Sec. 10-47c. Amendment of plan. With the exception of the terms which pertain to the capital contribution of member towns, the transfer of property to the regional school district, the grades included and the towns to be served by the regional school district, the terms of the plan approved through referenda pursuant to section 10-45 may be amended as follows: If a regional board of education finds it advisable to amend the plan or if the legislative body of a town served by the regional board of education requests amendment of such plan, the regional board of education shall prepare a report on the proposed amendment, including the question to be presented, file a copy with the state board of education and the clerk of each member town and make copies of such report available to the public at a district meeting called to present the plan. After such public hearing, the board shall set the date for referenda which shall be held simultaneously in each member town between the hours of six a.m. and eight p.m. At least thirty days before the date of the referenda, the regional board of education shall notify the town clerk in each member town to call the referendum on the specified date to vote on the specified question. The warning of such referenda shall be published, the vote taken and the results thereof canvassed and declared in the same manner as is provided for the election of officers of a town, except that absentee voting shall not be permitted

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Appendix I

in other than a special or regular election. The town clerk of each town shall certify the vote of his town to the regional board of education. If the majority vote in each town of the district is in favor of the proposed amendment to the plan, such amendment shall take effect immediately.

(1969, P.A. 698, S. 12.)

Sec. 10-48. Relocation of site. Section 10-48 is repealed.

(1953, S. 9034; 1969, P.A. 698, S. 27.)

Sec. 10-49. Site in town outside district. Section 10-49 is repealed.

(1953, S. 9044; 1969, P.A. 698, S. 27.)

Sec. 10-49a. Site in town outside district. Any school district may acquire real property upon which to build a school in a town not within such school district, provided such town approves such acquisition by referendum. Those eligible to vote at town meetings under section 7-6 shall be eligible to vote on such question. Any school district proposing to acquire such property shall so notify the town clerk of the town in which such property is located, and such town shall hold a referendum within sixty days after receipt of such notice. The school district giving such notice shall bear the cost of such referendum.

(1969, P.A. 698, S. 25.)

Sec. 10-50. Admission of adjacent town to district. Section 10-50 is repealed.

(1949 Rev., S. 1375; 1951, 1953, 1955, S. 9056; 1953, S. 9194; February, 1965, P.A. 411, S. 4; 1969, P.A. 698, S. 27.)

Sec. 10-51. Fiscal year. Budget. Payments by member towns. Investment of funds. Temporary borrowing. (a) The fiscal year of a regional school district shall be July first to June thirtieth. Except as otherwise provided in this subsection, not less than two weeks before the annual meeting held pursuant to section 10-47, the board shall hold a public district meeting to present a proposed budget for the next fiscal year. Any person may recommend the inclusion or deletion of expenditures at such time. After the public hearing, the board shall prepare an annual budget for the next fiscal year, make available on request copies thereof and deliver a reasonable number to the town clerk of each of the towns in the district at least five days before the annual meeting. At the annual meeting on the first Monday in May, the board shall present a budget which includes a statement of (1) estimated receipts and expenditures for the next fiscal year, (2) estimated receipts and expenditures for the current fiscal year, (3) estimated surplus or deficit in operating funds at the end of the current fiscal year, (4) bonded or other debt, (5) estimated per pupil expenditure for the current and for the next fiscal year and (6) such other information as is necessary in the opinion of the board. Persons present and eligible to vote under section 7-6 may accept or reject the proposed budget except as provided below. No person who is eligible to vote in more than one town in the regional school district is eligible to cast more than one vote on any issue considered at a regional school district meeting or referendum held pursuant to this section. Any person who violates this section by fraudulently casting more than one vote or ballot per issue shall be fined not less than three hundred dollars nor more than five hundred dollars and shall be imprisoned not less than one year nor more than two years and shall be disenfranchised. If the regional school district is comprised of four or more towns, the regional board of education may, in the call

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to the meeting, designate that the vote on the motion to adopt the budget shall be by paper ballots or by a "yes" or "no" vote on the voting machines in each of the member towns on the day following the district meeting. Two hundred or more persons qualified to vote in any regional district meeting called to adopt a budget may petition the regional board, in writing, at least three days prior to such meeting, requesting that any item or items on the call of such meeting, be submitted to the persons qualified to vote in the meeting for a vote by paper ballot or on the voting machines in each of the member towns on the day following the district meeting and in accordance with the appropriate procedures provided in section 7-7. If a majority of such persons voting reject the budget, the board shall, within two weeks thereafter and upon notice of not less than one week, call a district meeting to consider the same or an amended budget. Such meetings shall be convened at such intervals until a budget is approved. After the budget is approved, the board shall estimate the share of the net expenses to be paid by each member town in accordance with subsection (b) of this section and notify the treasurer thereof. With respect to adoption of a budget for the period from the organization of the board to the beginning of the first full fiscal year, the board may use the above procedure at any time within such period. If the board needs to submit a supplementary budget, the general procedure specified in this section shall be used:

(b) For the purposes of this section, "net expenses" means estimated expenditures less estimated receipts as presented in a regional school district budget. On the date or dates fixed by the board, each town in the district shall pay a share of the cost of capital outlay and current expenditures necessary for the operation of the district. The board shall determine the amount to be paid by each member town. Such amount shall bear the same ratio to the net expenses of the district as the number of pupils resident in such town in average daily membership in the regional school district during the preceding school year bears to the total number of such pupils in all the member towns. Until the regional school district has been in operation for one year, such amounts shall be based on the average daily membership of pupils in like grades from each of such towns at any school at which children were in attendance at the expense of such towns during the preceding school year.

(c) The board shall deposit or invest temporarily any funds which are not needed immediately for the operation of the school district in any manner permitted school districts or municipalities in chapter 112. Any income derived from such deposits or investments shall be used at least semiannually to reduce the net expenses. The board shall use any budget appropriation which has not been expended by the end of the fiscal year to reduce the net expenses of the district for the following fiscal year. The board may borrow funds temporarily in anticipation of payments to be made to it by a member town or the state, for the operation of its schools.

(1949 Rev., S. 1179; 1951, 1953, S. 964d; 1969, P.A. 698, S. 13; 1971, P.A. 679, S. 3, 4.)
Cited. 141 C. 401.

Sec. 10-51a. Petition to determine deficiency in town payment. If any town which is a member of a regional school district fails to include in its annual town budget appropriations for any year the amount necessary for payment of its proportionate share of the annual budget of such regional school district, as required by section 10-51 or section 5 of number 405 of the special acts of

1959, ten or more taxable inhabitants of a town within such school district, a majority of the board of selectmen of any such town, the attorney general, a holder or owner of bonds or notes of such regional school district, the board of education of such regional school district or the state board of education may petition the superior court to determine the amount of the alleged deficiency. If the court finds such deficiency to exist, it shall order such town, through its treasurer, selectmen and assessor, to provide a sum of money equal to such deficiency, together with a sum of money equal to twenty-five per cent thereof. The amount of the deficiency shall be paid by the town to the regional school district as soon as it is available; the additional sum of twenty-five per cent shall be kept in a separate account by such town and shall be applied toward payment of such town's share of the annual budget of the regional school district in the following year. If such order is made prior to the fixing of the annual tax rate of such town, such tax rate shall be adjusted to cover the sums included in such order. If such order is made after the fixing of the annual tax rate of such town, the sums included in such order shall be provided by the town from any available cash surplus, from any contingent fund, from borrowing, through a rate bill under the provisions of section 12-123 or from any combination thereof. Any borrowing to meet such deficiency shall be made by the town treasurer, with the approval of a majority of the selectmen, and no vote of the town shall be required therefor. Such borrowed amount shall be included in the estimated expenses of the town in the tax levy for the next fiscal year. Petitions brought to the superior court under the provisions of this section shall be privileged in respect to their assignment for hearing.

(1961, P.A. 114, S. 1.)

Sec. 10-52. Adult education. A regional district may provide adult education for the towns in the district in accordance with sections 10-67 to 10-70, inclusive, and shall be eligible for reimbursements for adult education programs in accordance with sections 10-67 and 10-71. Any balance of the cost of such adult education shall be prorated among and paid by the towns on the basis of the clock hour pupil attendance from each town. The regional board of education shall charge tuition for any student from outside the regional school district who participates in the adult education program.

(1951, 1955, S. 907d.)

Sec. 10-53. Application of education statutes. All provisions of the general statutes relating to public education, including those providing state grants-in-aid, shall apply to each town belonging to a regional school district, provided, if the board of education of any regional school district provides transportation to a regional school, such district shall be reimbursed by the state as provided in section 10-54. Any regional school district empowered to provide to the member towns all programs under the general supervision and control of the state board of education shall receive each year in addition to the amount of state aid under section 10-262 ten per cent of said amount.

(1951, S. 908d; 1967, P.A. 473, S. 1; 1969, P.A. 698, S. 14.)

Sec. 10-54. Transportation grants. Any town or regional school district which transports pupils to a regional school and any regional school district which transports pupils attending any other school in lieu of that provided by such district in accordance with approval by the regional board of education pursuant to section 10-55 shall be reimbursed by the state for one-half the

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amount paid for such transportation. At the close of each school year any regional or town board of education which provides such transportation shall file an application for such reimbursement on a form to be provided by the state board of education. Payments shall be made as soon as possible after the close of each fiscal year.

(1951, S. 905c, 1969, P.A. 698, S. 15.)

Sec. 10-55. Pupils to attend regional school. No pupil from any town belonging to a regional school district shall, at the expense of such town, attend any other school in lieu of that provided by said district except a vocational school approved by the state board of education, unless his attendance at such other school is approved by the regional board of education.

(1949 Rev., S. 1380; 1951, S. 910d.)

Sec. 10-56. Corporate powers. Bond issues. (a) A regional school district shall be a body politic and corporate with power to sue and be sued; to purchase, receive, hold and convey real and personal property for school purposes; and to build, equip, purchase, rent, maintain or expand schools. Such district may issue bonds in the name and upon the full faith and credit of such district and the member towns to acquire land, prepare sites, purchase or erect buildings and equip the same for school purposes, if so authorized by referendum. Such referendum shall be conducted in accordance with the procedure provided in section 10-47c except that any person entitled to vote under section 7-6 may vote and the question shall be determined by the majority of those persons voting in the regional school district as a whole. The exercise of any or all of the powers set forth in this section shall not be construed to be an amendment of a regional plan pursuant to said section 10-47c. A regional board of education may expend any premium in connection with such issue, interest on the proceeds of such issue or unused portion of such issue to add to the land or buildings erected or purchased and for the purchasing and installing of equipment for the same. Such bonds shall be denominated "Bonds of regional school district number .... of the State of Connecticut." Such bonds shall be serial bonds, with coupons attached, and registerable as to principal and interest or as to principal alone, shall be signed by the chairman and the treasurer of the regional board of education and shall bear such rate of interest, mature in such substantially equal instalments and be issued in such denominations and at such times and places as shall be determined by such board. The first instalment of any series of bonds shall mature not later than two years from the date of the issue of such series and the last instalment of such series shall mature not later than twenty years therefrom. Such bonds, when executed, issued and delivered, shall be general obligations of such district and the member towns, according to their terms. Any regional school district which has issued any bonds or other obligations pursuant to any general statute or special act may redeem them by issuing new bonds or other obligations.

(b) "Annual receipts from taxation" means the receipts from taxation of the member towns for the fiscal year next preceding the close of the last fiscal year of such regional school district. Notwithstanding the provisions of section 7-374, any regional school district may assume bonds or other indebtedness of any member town as part of the purchase price of any property for school purposes or issue bonds or notes, provided the aggregate indebtedness of such district shall not exceed: (1) In the case of a regional school district serving the

same towns as are served by two or more town school districts, two and one-quarter times the annual receipts from taxation or (2) in the case of a regional school district empowered to provide for the member towns all programs under the general supervision and control of the state board of education, four and one-half times such annual receipts from taxation. Any regional school district may issue additional bonds or notes in an amount not to exceed three and one-half times such annual receipts from taxation less the aggregate indebtedness as defined in section 7-374 for the member towns of such district.

(c) When a district has been authorized to issue general obligation bonds as provided by this section, the board may authorize, for a period not to exceed four years, the issue of temporary notes in anticipation of the receipt of the proceeds from the sale of such bonds. Notes issued for a shorter period of time may be renewed by the issue of other notes, provided the period from the date of the original notes to the maturity of the last notes issued in renewal thereof shall not exceed four years. The term of such notes shall not be included in computing the time within which such bonds shall mature. The provisions of section 7-373 shall be deemed to apply to such notes. The board shall determine the date, maturity, interest rate, form, manner of sale and other terms of such notes which shall be general obligations of the regional school district and member towns. Such notes may bear interest or be sold at a discount. The interest or discount on such notes and any renewals thereof and the expense of preparing, issuing and marketing them may be included as a part of the cost of the project for the financing of which such bonds were authorized. Upon the sale of such bonds, the board shall apply immediately the proceeds thereof, to the extent required, to the payment of the principal and interest of all notes issued in anticipation thereof or deposit the proceeds in trust for such purpose with a bank or trust company, which may be the bank or trust company, if any, at which such notes are payable.

(d) Subject to the provisions of subsection (c) of this section, the board may deposit or invest the proceeds of bonds or of notes issued in anticipation thereof in the same manner and to the same extent as permitted school districts or municipalities in chapter 112.

(1949 Rev., S. 1381; 1951, 1955, S. 911d; 1953, S. 915d; November, 1955, S. N118; February, 1965, P.A. 7; 1967, P.A. 626, S. 2; 674; 1969, P.A. 132, S. 2; 698, S. 16; P.A. 74-239, S. 1, 2.)

Sec. 10-57. Debt limitation. Section 10-57 is repealed.

(1951, 1955, S. 912d; November, 1955, S. N119; 1957, P.A. 511; September, 1957, P.A. 19; 1963, P.A. 604, S. 2; 1969, P.A. 132, S. 1; 698, S. 27.)
See Sec. 10-56.

Sec. 10-58. Investment of proceeds of bond issue. Section 10-58 is repealed.

(1951, S. 913d; 1969, P.A. 698, S. 27.)
See Sec. 10-56.

Sec. 10-58a. Default of district in payment on bonds or notes. Withholding of state aid. Whenever it is established as herein provided that a regional school district, including Regional School District Number 1 of Litchfield County, has defaulted in the payment of the principal or interest, or both, on its bonds or notes, the payment of state aid and assistance to such regional school district pursuant to any statute then in existence shall be withheld by the state. If a holder or owner of any such bond or note of such regional school district files

with the state comptroller a verified statement describing such bond or note and alleging default in the payment thereof or the interest thereon, or both, the comptroller shall immediately investigate the circumstances of the alleged default, prepare and file in his office a certificate setting forth his finding with respect thereto and serve a copy of such finding, by registered or certified mail, upon the treasurer or chief fiscal officer of such regional school district. Such investigation shall cover the current status with respect to the payment of principal of and interest on all outstanding bonds and notes of such regional school district, and the statement prepared and filed by the comptroller pursuant to this section shall set forth a description of all bonds and notes of such regional school district found to be in default and the amount of principal and interest thereon past due. Upon the filing of such a certificate in the office of the comptroller, the comptroller shall thereafter deduct and withhold from the next succeeding payment of state aid or assistance otherwise due such regional school district such amount as is necessary to pay the principal of and interest on such bonds and notes of such regional school district then in default. If such amount is insufficient to pay all of such principal and interest, said comptroller shall similarly deduct and withhold from the next succeeding payment of state aid and assistance, otherwise due to any town in such district which is currently in default of its annual payments to such district, such amount as is necessary to pay the principal of and interest on such bonds or notes remaining in default. If all such amounts withheld are insufficient to pay all such principal and interest, the comptroller shall similarly deduct and withhold from each succeeding payment of state aid or assistance otherwise due such regional school district and such towns such amount or amounts thereof as may be required to pay all of the principal of and interest on such bonds and notes then in default. Payments of state aid or assistance so deducted and withheld shall be forwarded promptly by the comptroller to the paying agent or agents for the bonds and notes in default for the sole purpose of payment of defaulted principal of and interest on such bonds or notes; provided, if any such payment of state aid or assistance so deducted or withheld is less than the total amount of all principal and interest on such bonds and notes, then the comptroller shall forward to each paying agent an amount in the proportion that the amount of such bonds and notes in default payable by such paying agent bears to the total amount of the principal of and interest then in default on such bonds and notes of such regional school district. The comptroller shall promptly notify the treasurer or the chief fiscal officer of such regional school district of any payment or payments made to any paying agent or paying agents of defaulted bonds or notes pursuant to this section. The state of Connecticut hereby covenants with the purchasers, holders and owners from time to time of bonds and notes issued by regional school districts for school purposes that it will not repeal the provisions of this section or amend or modify the same so as to limit or impair the rights and remedies granted hereby; provided nothing herein contained shall be deemed or construed as requiring the state to continue the payment of state aid or assistance to any regional school district or town or as limiting or prohibiting the state from repealing or amending any law relating to state aid or assistance, the manner and time of payment or apportionment thereof, or the amount thereof.

(1961, P.A. 114, S. 2.)

Sec. 10-59. Fiscal year. Budget. Section 10-59 is repealed.

(1949 Rev., S. 1384; 1951, 1953; 1955, S. 915d; 1959, P.A. 608, S. 27.)
See Sec. 10-51.

Sec. 10-60. Borrowing in addition to bonds. In addition to the power to issue bonds as provided by section 10-56, such regional board of education may, when so authorized by a majority vote at a regional school district meeting called for such purpose, borrow sums of money in an amount which shall not exceed in the aggregate two hundred thousand dollars for a period not to exceed five years and pay interest thereon for acquiring lands, securing the services of architects and professional consultants, the operation and maintenance of regional schools, the installation of equipment therein and contingent or other necessary expenses connected therewith. Persons eligible to vote under the provisions of section 7-6 may vote on such issue. Such loans shall be in the name of and shall be general obligations of such district and the member towns. The chairman and treasurer of the board shall sign the note evidencing any such loan.

(1949 Rev., S. 1384; 1951, 1953, 1955, S. 9158; 1969, P.A. 200, S. 1, 6%, S. 17.)

Sec. 10-61. Withdrawal of town. Section 10-61 is repealed.

(1951, 1955, S. 9166; 1963, P.A. 389, S. 9.)
See Sec. 10-63a et seq.

Sec. 10-62. Dissolution of district. Section 10-62 is repealed.

(1951, S. 9170; 1963, P.A. 389, S. 9.)
See Sec. 10-63a et seq.

Sec. 10-63. Payment of indebtedness on dissolution of district. Section 10-63 is repealed.

(1951, S. 9184; 1963, P.A. 389, S. 9.)
See Sec. 10-63f.

Sec. 10-63a. Vote for withdrawal of town or dissolution of district. (a) Any town which is a member of a regional school district may, pursuant to a vote of its legislative body, apply to the regional board of education to institute procedure for withdrawal from the district or, in the case of a district composed of two towns, dissolution of the district as hereinafter provided. (b) Any two or more towns which are members of a regional school district composed of three or more towns may, pursuant to a vote of the legislative bodies of the respective towns, apply to the regional board of education to institute procedure for the dissolution of the district as hereinafter provided.

(1963, P.A. 389, S. 1; February, 1965, P.A. 411, S. 5; 1969, P.A. 698, S. 18.)

Sec. 10-63b. Committee to determine conditions of withdrawal or dissolution. Within thirty days of receipt of an application pursuant to section 10-63a the regional board of education shall call for the appointment of a committee to determine whether and under what conditions such withdrawal or dissolution shall take place. The committee shall consist of the following: One member of the board of education of each town within the district, to be selected by each such board, if any, or if none, an elector to be elected by the legislative body in such town; one member of the board of finance or comparable fiscal body of each town within the district to be selected by each such board or body; two members of the regional board of education, to be selected by such board, no more than one of whom may be a resident of a town making the application for the appointment of the committee; one member to be appointed by the state board of education, who shall not be a resident of any town within the district;

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the state treasurer or his designee, and one member to be appointed by the regional board of education, who shall be an expert in municipal bonding and financing and who shall not be a resident of any town within the district. The members shall receive no compensation for their services, but their expenses and those incurred by the regional board in connection with withdrawal or dissolution procedures shall be paid by the towns applying for withdrawal or dissolution. The appointee of the state board of education shall call the first meeting of the committee, and the committee shall organize and function in accordance with section 10-41.

(1963, P.A. 389, S. 2; 1969, P.A. 698, S. 19.)

Sec. 10-63c. Report of committee. Within one year after its appointment, the committee shall prepare a written report of its recommendation concerning the advisability of a withdrawal or dissolution. If the committee recommends a withdrawal or dissolution, the report shall include: (1) A determination of the value of the net assets of the regional district, (2) an apportionment of the net assets to each member town on the basis of the ratio which the total average daily membership of such town since its membership in the regional district bears to the total average daily membership reported to the state board of education by the regional board of education up to and including the last such report, (3) a plan for settlement of any obligations and the transfer of property from the regional school district to the member town school districts, (4) a timetable for the orderly withdrawal or dissolution of the regional district and establishment of town boards of education if none exist, (5) the question to be determined by the referenda and (6) such other matters as the committee deems necessary. The provisions of sections 10-43 and 10-45, except as provided below, shall apply to the procedures for submission of the plan to the state board of education, action by such board, presentation of such plan to the member towns, action by such towns and the dissolution of the committee. The establishment of any new town board of education shall be in accordance with chapter 146. Upon an affirmative vote in each member town, the regional board of education and member towns shall cooperatively implement the plan for dissolution or withdrawal of a member town.

(1963, P.A. 389, S. 3; 1969, P.A. 698, S. 20.)

Sec. 10-63d. Submission of final plan. Publication of notice. Section 10-63d is repealed.

(1963, P.A. 389, S. 4; 1969, P.A. 698, S. 27.)

Sec. 10-63e. Special town meetings on proposal. Section 10-63e is repealed.

(1963, P.A. 389, S. 5; 1969, P.A. 698, S. 27.)

Sec. 10-63f. Obligations not affected by action. Such withdrawal or dissolution shall not impair the obligation of the withdrawing town or the district to the holders of any bonds or other outstanding indebtedness issued prior to withdrawal or dissolution under authority of this part. The regional board of education and the board of education of the town or towns involved may make agreements for the payment of money to or from the district and said towns in accordance with the final plan of withdrawal.

(1963, P.A. 389, S. 6.)

Sec. 10-63g. Withdrawal and dissolution restricted. (a) No town shall be

permitted to withdraw from a regional school district and no district shall be dissolved except in accordance with the provisions of sections 10-63a to 10-63f, inclusive, and no application for withdrawal or dissolution shall be made within three years after the formation of the district. (b) No town which has voted to apply for the institution of withdrawal or dissolution procedure as provided in sections 10-63a to 10-63f, inclusive, may again so apply within three years after the date of its last application.

(1953, P.A. 269, S. 7, 8.)

Sec. 10-63h. **Applicability to existing regional school districts.** Notwithstanding the provisions of any general or special act or compact adopted by referenda to establish a regional school district, the provisions of this part shall apply to the regional school districts in existence on June 24, 1969, except as provided below. (a) Nothing in this part shall be construed to require an existing regional school district to change the composition of the membership of its board of education or their terms of office. (b) If the board consists of nine members, three from each member town, such members may be elected on a rotating basis each year for terms of three years. If any adjustments are necessary to achieve this system, the regional school district shall use the procedures provided in section 10-47c to make the necessary changes, provided the term of office of no incumbent shall be shortened. (c) Any such school district may change the representation of the member towns on the regional board or change the term of office of such members to four years in accordance with the procedures provided in section 10-47c. If the latter change is made, the member towns may elect their representatives on the regional board of education in accordance with subsection (b) or (c) of section 10-46 as determined by the legislative body of each town.

(1969, P.A. 698, S. 21.)

Sec. 10-63i. **Regional school district established before June 24, 1969.** Any referenda establishing a regional school district before June 24, 1969, which by the terms of the question presented in such referenda established a regional school district to provide educational programs for kindergarten through grade twelve, shall be deemed to have empowered such district to provide for the member towns any program under the general supervision and control of the state board of education. In such cases, the town board of education in each member town is dissolved when the regional board of education assumes the direction of all such programs in the member towns, but in no case later than two years from the date of the referenda establishing such regional school district.

(1969, P.A. 698, S. 22.)

PART IV

REGIONAL VOCATIONAL AGRICULTURE CENTERS

Sec. 10-64. **Boards of education may establish regional vocational agriculture centers.** Any town or regional board of education may enter into agreements with other such boards of education to establish a regional vocational agriculture center in conjunction with its regular public school system, provided such center shall have a regional vocational agriculture consulting committee which shall

advise the operating board of education but shall have no legal authority with respect to such center. Each board of education shall appoint to said committee two representatives, who have a competent knowledge of agriculture and who need not be members of such board.

(1933, S. 9263; 1967, P.A. 678, S. 1.)

Sec. 10-65. Grants to towns or districts operating centers. A town or regional school district operating a vocational agriculture center approved by the state board of education for program, educational need, location and area to be served shall be eligible for the following grants: (a) Within the availability of funds, the total cost, in a single grant, of constructing and equipping approved facilities to be used exclusively for such vocational agriculture center, for the expansion or improvement of existing facilities or for the replacement or improvement of equipment therein, and (b) the total cost of operating the vocational agriculture center including the cost of instructing regular secondary school vocational agriculture students, out-of-school youth and adult students but excluding any capital outlay charges, less one-third the average per pupil cost of the previous year of operation of the secondary schools of the district with which the regional vocational agriculture center is associated times the average daily membership of the regular all-day vocational agriculture students. The board of education operating such center may charge tuition which shall not exceed the average per pupil expenditure of the previous year for all secondary school pupils in the receiving district and sending boards of education which maintain secondary school grades shall receive grants equal to one-half the tuition paid by them for vocational agriculture pupils in such grades.

(1933, S. 9214; 1961, P.A. 40; 1967, P.A. 678, S. 2.)

Sec. 10-66. Regulations. The state board of education shall have authority to make such regulations as are necessary to carry out the purposes of this part and to insure reasonable economy in the vocational agriculture centers.

(1933, S. 9214.)

PART IVa

REGIONAL EDUCATIONAL SERVICE CENTERS

Sec. 10-66a. Establishment. Commencing August 1, 1972, a regional educational service center may be established in any regional state planning area as defined in section 4-124b by four or more boards of education for the purpose of cooperative action by town or regional boards of education to furnish programs and services to the participating boards of education. Except where the pupil population is over fifty thousand in a given planning area, only one regional educational service center may be established in each area. In no case shall there be more than two educational service centers in any area. If, after the establishment of a regional educational service center, boards of education vote to withdraw so that fewer than four such boards are participating, the center shall cease to exist at the end of the subsequent fiscal year.

(1972, P.A. 117, S. 1.)

Sec. 10-66b. Operation and management. Board. The operation and man-

Sec. 7-6. Eligibility to vote. At any town meeting other than a regular or special town election or at any meeting of any fire, sewer or school district or any other municipal subdivision of any town incorporated by any special act, any person who is an elector of such town may vote and any citizen of the age of eighteen years or more who, jointly or severally, is liable to the town, district or subdivision for taxes assessed against him on an assessment of not less than one thousand dollars on the last-completed grand list of such town, district or subdivision, or who would be so liable if not entitled to an exemption under subdivision (17), (19), (22), (23), (25) or (26) of section 12-81, may vote, unless restricted by the provisions of any special act relating to such town, district or subdivision.

(1949 Rev., S. 496; 1951, 1955, S. 2093; 1963, P.A. 642, S. 5; 1972, P.A. 127, S. 33)

See Secs. 9-1, 9-360, 9-363.

Freehold estate ratable, but not rated, does not qualify. 2 D. 504.

Requisite value necessary to vote determined without reference to existence of mortgage on the property, where husband and wife are joint owners, each is entitled to vote if assessed value is not less than $2,000; history of statute reviewed. 19 CS 234.

Sec. 7-7. Conduct of meetings of municipal corporations. Petition for vote by ballot or voting machine. All towns, when lawfully assembled for any purpose other than the election of town officers, and all societies and other municipal corporations when lawfully assembled, shall choose a moderator to preside at such meetings, unless otherwise provided by law; and, except as otherwise provided by law, all questions arising in such meetings shall be decided in accordance with standard parliamentary practice, and towns, societies and municipal corporations may, by ordinance, adopt rules of order for the conduct of their meetings. At any such town meeting the moderator shall be chosen from the last-completed registry list of such town. Two hundred or more persons or ten per cent of the total number qualified to vote in the meeting of a town or other municipal corporation, whichever is less, may petition the clerk or secretary of such town or municipal corporation, in writing, at least twenty-four hours prior to any such meeting, requesting that any item or items on the call of such meeting be submitted to the persons qualified to vote in such meeting not less than seven nor more than fourteen days thereafter, on a day to be set by the town meeting or, if the town meeting does not set a date, by the town selectmen, for a vote by paper ballots or by a "Yes" or "No" vote on the voting machines, during the hours between twelve noon and eight p.m.; but any municipality may, any provision of any special act to the contrary notwithstanding, by vote of its legislative body provide for an earlier hour for opening the polls but not earlier than six a.m. The paper ballots or voting machine ballot labels, as the case may be, shall be provided by such clerk or secretary. When such a petition has been filed with such clerk or secretary, the moderator of such meeting, after completion of other business and after reasonable discussion, shall adjourn such meeting and order such vote on such item or items in accordance with the petition; and any item so voted may be rescinded in the same manner. If such moderator resigns or is for any other cause unable to serve as moderator at such adjourned meeting, such clerk or secretary shall serve, or may appoint an elector of such municipality to serve, as moderator of such adjourned meeting. Such clerk or secretary, as the case may be, shall phrase such item or items in a form suitable for printing on such paper ballots or ballot labels. The vote on any item on the call of a town or other municipal corporation shall be taken by paper ballot if so voted at the meeting, if no petition has been filed under this section with reference to such item.

(1949 Rev., S. 495, 1953, S. 2100; 1957, P.A. 345; 1961, P.A. 593; 1967, P.A. 805, S. 2; 1969, P.A. 3, S. 1; 694, S. 18; P.A. 73-667.)

See Sec. 9-1

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APPENDIX II

PARTIAL LIST OF POWERS AND DUTIES OF BOARDS OF EDUCATION IN CONNECTICUT

POWER OR DUTY	GENERAL STATUTES §
Maintain good public elementary and secondary schools, implement the educational interests of the state, and provide such other educational activities as in its judgment will best serve the interests of the town.	10-220
Have charge of the schools in the town.	10-220
Make continuous study of the needs for school facilities and of long-term building projects and make recommendations to the town in this regard.	10-220
Have the care, maintenance and operation of the buildings, lands, apparatus and other properties used for school purposes.	10-220
Determine the number, age and qualifications of the pupils to be admitted into each school.	10-220
Employ and dismiss the teachers of the schools subject to the provisions of applicable statutes.	10-220
Designate the schools which will be attended by the various children within the several towns.	10-220
Make such provisions as will enable each child of school age residing in the town of suitable mental and physical condition to attend some public day school for the period required by law.	10-220
Provide for the transportation of children wherever transportation is reasonable and desirable, and for such purpose make contracts	

POWER OR DUTY	GENERAL STATUTES §
covering periods of not more than five years.	10-220
Arrange with the board of education of an adjacent town for the instruction therein of such children as can attend school in such adjacent town more conveniently.	10-220
Cause each child between the ages of seven and sixteen living in the town to attend school.	10-220
Secure educational opportunities in another town in accordance with the provisions of the statutes and give all children of the town as nearly equal advantages as may be practicable.	10-220
Perform all acts required of it by the town or necessary to carry into effect the powers and duties imposed upon it by law.	10-220
Prescribe rules for management, studies, classification and discipline of public schools and, subject to the state board of education, the textbooks to be used.	10-221
Make rules for the arrangement, use and safekeeping within its jurisdiction of school libraries and approve books selected therefor.	10-221
Approve plans for schoolhouses and superintend any high or grade school.	10-221
Prepare itemized estimate of cost of maintenance of public schools for ensuing year.	10-222
Expend any monies appropriated by the legislative body of the town at its own discretion.	10-222
Transfer unexpended or uncontracted-for portion of appropriations for school purposes to any other item of its itemized estimate.	10-222

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Appendix II

POWER OR DUTY	GENERAL STATUTES §
Expel from school any pupil regardless of age who after a full hearing is found guilty of conduct inimical to the best interests of the school.	10-234
Protect employees from financial loss which might arise from suit or claim for damages alleging negligence.	10-235
Establish and maintain a school activity fund to finance the portion of school lunches not provided by the town or to finance part of the cost of driver education courses not provided by the town or to provide for funds of schools and school organizations as it determines.	10-237
Contract with a federal governmental agency for funds to establish a demonstration scholarship program for a period of up to five years.	10-239c
Ascertain the name and age of each child under twenty-one years who resides in town on April 1.	10-249
Pay for transportation of high school students.	10-277
Establish and maintain a program of adult education for at least 150 clock hours per year in towns of 10,000 or more (permissible but not mandatory for towns of less than 10,000 population).	10-69
Establish and maintain summer courses and charge therefor.	10-74a
Identify children requiring special education and provide professional services therefor.	10-75b
Require each child to be vaccinated for smallpox and measles before attending public school.	10-204

Appendix II

POWER OR DUTY	GENERAL STATUTES §
Require vaccination for poliomyelitis for each child before attending public school.	10-204a
Appoint (mandatory for towns with over 10,000 population) one or more qualified medical advisors and provide adequate facilities for privacy during health exams and prescribe his functions and duties.	10-205
Require pupil physical examinations once every three years for physical well-being.	10-206
Establish and operate lunch services for school children and employees and charge therefor.	10-215

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IN THE

Supreme Court of the United States

October Term, 1975

Docket No. 75-496

REGIONAL HIGH SCHOOL DISTRICT NO. 5, REGIONAL BOARD OF EDUCATION OF REGIONAL HIGH SCHOOL DISTRICT NO. 5, HENRY W. BENEDICT, as Treasurer of the Town of Bethany, JAMES BERRY, as Treasurer of the Town of Woodbridge, SIDNEY SVIRSKY, as Town Clerk of the Town of Bethany, and JEAN HANNA, as Town Clerk of the Town of Woodbridge,

Petitioners,

vs.

JOHN E. BAKER and GERALDINE S. GEORGE,

Respondents.

REPLY OF PETITIONERS

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Respondents.

REPLY OF PETITIONERS

1. The opinion of the Court of Appeals, dated July 23, 1975, has now been reported at 520 F.2d 799.

2. Petitioners have previously set out at pages 6-7 and 11 of their petition the powers of the regional board. Respondents at pages 5-10 of their brief in opposition have discussed the powers of the regional board in such an inaccurate and misleading manner as to require correction in this reply.

a. *Bonds and other borrowing.* A regional board may issue bonds *only* when authorized by referendum in the towns comprising the district. § 10-56(a). It may issue

bond anticipation notes for up to four years *only* when it has been authorized by referendum to issue bonds. § 10-56(c). It may also borrow up to $200,000 for up to five years *only* when authorized by vote of a district meeting. § 10-60.

b. *Determination of amounts to be paid by each town.* After adoption of the budget by the district meeting, the regional board merely mathematically determines the amount payable by each town in accordance with the formula set out in § 10-51(b) and notifies the treasurer of each town of the amount. § 10-51(a). It has no discretion in determining the amount, and it has no power to levy and collect taxes.

c. *Transfer of funds between items in the budget.* After adoption of the budget by the district meeting, the regional board "may transfer any unexpended or uncontracted-for portion of any appropriation for school purposes to any other item" of the budget. § 10-222. But respondents' argument (raised for the first time in their brief in opposition, p. 9) that this is a "truly awesome power" ignores the realities of regional school district operation. See *Salyer Land Co.* v. *Tulare Water District,* 410 U. S. 719, 734 (1973). The uncontroverted affidavits of the Chairman of the regional board and of the Superintendent of District No. 5 (submitted in opposition to respondents' motion for summary judgment) establish that the itemized budget as adopted by the district meeting governs the activities and operation of District No. 5.

d. *Submission of collective bargaining agreements to the district meeting.* Teachers' salaries constitute more than half of District No. 5's budgeted expense for the year

(Smith Aff., Ex. 4). While it is the regional board that initially negotiates a collective bargaining agreement with the representatives of the teachers, the district meeting may reject an agreement within thirty days after it has been filed. § 10-153d. A special district meeting for that purpose may be convened by the regional board, § 10-47, and must be convened by the regional board upon request of the chief executive officer of any member town, § 10-153d, or upon application of twenty inhabitants of the regional district.[1] §§ 10-47, 10-242, 7-1. The district meeting's power to reject a collective bargaining agreement is an important adjunct to its power to approve or reject the district's annual budget.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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November, 1975

1. Respondents' brief in opposition (pp. 9-10) is incorrect on this point, and so is the Court of Appeal's opinion (Petition, Appendix. p. 7a).